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U.S. COURT OF APPEALS
FILED

APR 6 1987

JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner,

v.

THE STATE OF ARIZONA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
ARIZONA COURT OF APPEALS, DIVISION TWO

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Tucson, Arizona 85704
(602) 297-5111

Counsel of Record

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Counsel for Petitioner

April 6, 1987

6621



QUESTIONS PRESENTED

1. Was there any untainted information contained within the affidavit for the search warrant?
2. If there was information untainted by the police illegal search and seizure, were there sufficient facts contained within the search warrant affidavit, independent of what the police observed during a prior illegal search, and independent of the fruits of said illegal search, to constitute probable cause for the issuance of the subsequently issued search warrant?
3. If there was an insufficient independent source of information to support probable cause for the issuance of the search warrant, should not all of the evidence obtained via the search warrant have been excluded at trial?



**LIST OF PARTIES [and or]
RULE 28.1 LIST**

The parties to the proceedings are petitioner,
William Ward Knapp, and the State of Arizona,
respondent.



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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner

v.

THE STATE OF ARIZONA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA
COURT OF APPEALS, DIVISION TWO

The petitioner William Ward Knapp respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Arizona Court of Appeals, Division Two, entered in the above-entitled proceeding on February 4, 1987.

OPINIONS BELOW

The opinion of the Arizona Court of Appeals is an unreported memorandum decision, and thus, reprinted in the appendix hereto, page 17.

The Arizona Supreme Court denied Petitioner's

petition for review by the Arizona Superior Court and on February 4, 1987, the Arizona Court of Appeals entered its order in conformity with its memorandum decision.

JURISDICTION

STATUTE INVOLVED

Petitioner herein submits that this court has jurisdiction, pursuant to 28 U.S.C. Section 1257(3), because petitioner has been denied his rights under the Fourth Amendment of the United States Constitution due to the fact that the State of Arizona, through its police officers, illegally searched and seized property of the petitioner and said evidence was used at trial in violation of petitioner's right to be protected and free from unreasonable search and seizures.

STATEMENT OF THE CASE

The Arizona Court of Appeals, Division Two,



affirmed the trial court's finding that despite an illegal search and seizure by the police of petitioner's room, the evidence that the police observed during said illegal search was admissible because the search warrant affidavit contains sufficient facts, untainted and independent of what the police observed during the illegal search, to support the issuance of the search warrant and subsequent use of the evidence at trial.

A copy of the memorandum decision is included the Appendix as Exhibit A.

The material facts are as follows:

A maid cleaning a Tucson, Arizona, motel room entered room number 129 to clean. The affidavit for issuance of a search warrant¹ stated that

"she observed a quantity of marijuana in the bath tub in the [sic] Room 129. Contact was made to the Tucson Police Department by the manager [not the maid] of the Holiday Inn. Officers Ralls and Knoblock were taken to room number 127 and room number 129 by the manager. . . Number 129 was entered due to the concern of the management as to what items were located in the bath tub area. . . Upon Officers Ralls and Knoblock entering this room number 129, they observed a quantity of what appeared to be marijuana located in the bath tub area. . . After this was observed and a



surveillance was maintained from room number 231. . . ."

Petitioner was arrested and then a search warrant was issued based upon the information contained in the search warrant affidavit. The trial court ruled that the initial entrance by Officers Knoblock and Ralls was illegal and suppressed evidence of what the police observed during that initial illegal entry, but allowed that same evidence to be introduced at trial based upon the independent source doctrine. The trial court stated:

"However, the court is of the opinion that there are sufficient facts contained in the search warrant and the affidavit in support of the search warrant independent of what the officers saw in the room to constitute probable cause for the issuance of the search warrant, and, therefore, denies the motion to suppress insofar as it relates to that which was seized and pursuant to the search warrant."

The police (Officers Ralls and Knoblock) saw the marijuana during their illegal entry. The affiant who swore out the telephonic affidavit in support of the search warrant was Officer Kreutz.



Officer Kreutz arrived on the scene subsequent to
the illegal entry, and joined Officers Ralls and
Knoblock in the surveillance from room number 231².
Officer Kreutz, the search warrant affiant, did not
speak with the maid informant prior to swearing out
the affidavit. Officer Kreutz did not speak with
the manager identified (but unnamed) in the
affidavit. Officer Kreutz obtained from Officers
Knoblock and Ralls the information in the affidavit
concerning what the maid saw and what the manager
had been concerned about, just after their illegal
search. Officer Kreutz, in his obtaining the search
warrant, used the information that Ralls and
Knoblock had gained during their illegal search³.
The affidavit does not state that the manager had
seen any contraband. Officer Kreutz' only
observation contained in his affidavit for the
search warrant was that of petitioner having loaded
and unloaded suitcases⁴. Officer Kreutz did not see
any contraband or illegal activity. The only
grounds for the arrest were petitioner's unloading
and loading of suitcases and the illegal



observations of Officers Ralls and Knoblock during the illegal warrantless entry⁵. According to the affidavit, Officer Knoblock and/or Ralls spoke to the manager, not the maid. The manager told Officer Knoblock he/she was concerned "as to what items were located in the bath tub"⁶. Officers Knoblock and Ralls then told Kreutz (the search warrant affiant) what they had seen during their illegal search. There is no mention in the affidavit what, if anything, the maid told the manager. The source of affiant's information concerning marijuana is three times removed from the affiant himself, that is, triple hearsay. None of the names of the people providing information to the police are contained within the affidavit. The only pieces of information contained in the search warrant affidavit that might be considered untainted are the statements about what a maid saw (which is at least double hearsay) and the observations made subsequent to the illegal search, that is, the loading and unloading of suitcases. All other information in the search warrant affidavit pertinent to the issue



of probable cause for issuance is tainted, if not illegal. However, it can be argued that even those statements about what a maid saw and about the loading and unloading of suitcases is also tainted because the statement about what the maid saw provided the basis for the illegal entry by the police, and those same police gave that information to the search warrant affiant, all of which was used in obtaining the search warrant⁷.

But assuming for the purposes of the following argument that the statements in the affidavit about what a maid saw and about the loading and unloading of suitcases is untainted, the issue then becomes whether that information is sufficient to provide probable cause for the issuance of a search warrant.

REASONS FOR GRANTING THE WRIT

The writ should be granted because there is insufficient information in the search warrant affidavit to support a finding of probable cause, after all illegally obtained information is excised



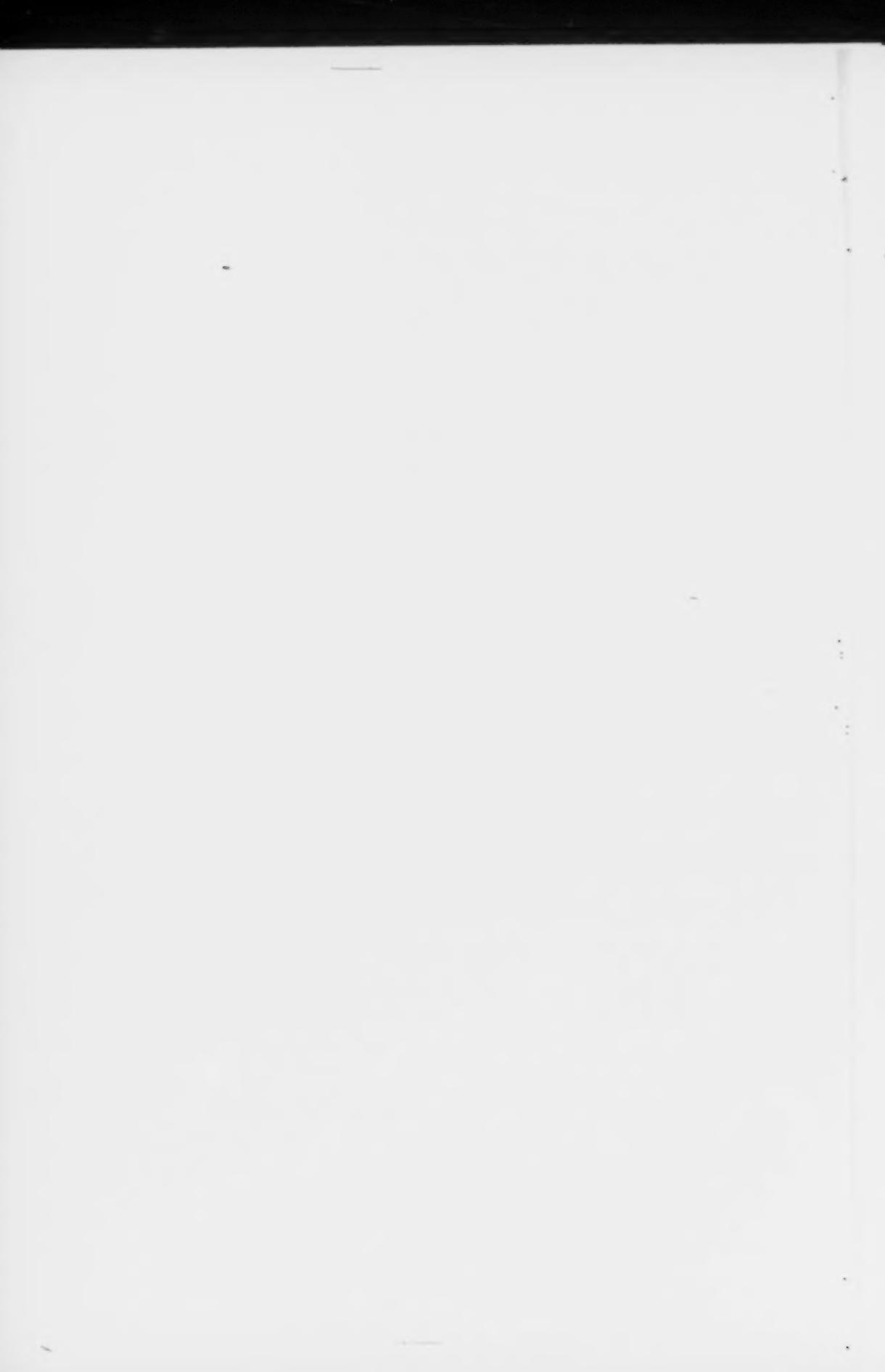
from the search warrant affidavit.

Given the fact that the police officers (Knoblock and Ralls) illegally entered and observed the marijuana which was eventually admitted into evidence at trial, the conceptual difficulty arises when excising the illegally obtained information contained in the affidavit in support of the search warrant, and then confining oneself to only that information which is left within the four corners of the affidavit in determining whether the magistrate had probable cause to issue the search warrant. What is left is the totality of the circumstances upon which the probable cause determination should be made. The requirement of probable cause for the issuance of a warrant is to be determined in light of the totality of the circumstances made known to the magistrate, Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983). (Emphasis supplied.) The search warrant issued subsequent to an illegal search is nonetheless valid if it could have been issued upon the untainted information contained in the affidavit, United States v. Dimuro, 540 F.2d 503,



Cert. Den. 429, U.S. 1038, 97 S.Ct. 733, 50 L.Ed. 2d 749. All data necessary to show probable cause for the issuance of a search warrant must be contained within the four corners of the written affidavit, United States v. Anderson, 453, F.2d. 174, United States v. Lucarz, 430 F.2d. 105.

The Arizona Court of Appeals, Division Two, stated in its memorandum decision8 herein that "the information provided by the maid was in itself sufficient to establish probable cause", relying on State v. Diffenderfer, 120 Ariz. 404, 586 P.2d. 653 (App. 1978). There are two problems with that statement by the Court of Appeals. The first is that the affidavit does not state that the maid "provided" any information at all, nor does the affidavit state to whom such "information" was provided. There is nothing within the four corners of that affidavit stating any of the police ever spoke to the maid prior to issuance of the search warrant. At most, it can be inferred that the maid may have spoken to the manager, who in turn called the police, although the affidavit does not even



state that the maid is the person who alerted the management, nor does the affidavit state that the maid spoke to the manager. Even the affidavit states that "contact was made to the Tucson Police Department by the manager of the Holiday Inn. Officers Ralls and Knoblock were taken to room number 127 and room number 129 by the manager." (Emphasis added.) There is no way that the magistrate could have reasonably determined that the maid had provided any information to the affiant. And in fact, we know that the maid had not spoken to the affiant (Officer Kreutz) prior to or at the time of the issuance of the warrant⁹ because Officer Kreutz' involvement began at the surveillance stage in the room above, subsequent to the illegal entry.

The second problem with the Arizona Court of Appeals' statement that "the information provided by the maid was in itself sufficient to establish probable cause" is the Court's reliance on State v. Diffenderfer, supra. Admittedly, Diffenderfer is the closest case to the case at hand, but it is not on point.



In Diffenderfer, two named, citizen informants told the policeman/search warrant affiant directly that they had seen marijuana growing in a yard. In the case at bar, the maid did not tell the affiant anything. And, according to the affidavit, the only direct contact any of the "informants" had with the police was the manager's statement of concern "as to what items were located in the bath tub". Thus, note the fact that the information given directly to the police (as contained within the four corners of the affidavit) says nothing even remotely related to contraband. In Diffenderfer, the affidavit contained the names and addresses of the informants, thus allowing the magistrate to conclude that those informants were named, citizen informants, and presumably reliable. In the case at hand, the informant is anonymous. No where within the four corners of the affidavit herein is there the name of the maid who observed marijuana in the bath tub. "Anonymous" literally means "without name".

Thus, whereas in the Diffenderfer affidavit, you have two named, citizen informants stating



directly to the search warrant affiant that they saw marijuana. In the case at hand you have a situation where, according to the affidavit, the only person who had supposedly seen marijuana (the anonymous maid) had no contact with the search warrant affiant. Indeed, according to the affidavit, the maid, who was the only person who had (legally) seen the marijuana, had not made any sort of contact with any of the police, let alone the search warrant affiant.

A search warrant affiant must have personal knowledge as to the facts alleged, as distinguished from a ceremonial attestation that he knows or believes facts to be true, State v. Moody, 114 Ariz. 365, 560 P.2d. 1272, and where the information in a search warrant affidavit is not within the affiant's first-hand knowledge, the allegations must be factual rather than conclusory and be shown to be reliable, Id., State v. Torrez, 112 Ariz. 525, 544 P.2d. 207 (1975).

There can be no dispute that the extent of Officer Kreutz' first-hand knowledge as contained



within the four corners of the affidavit was the surveillance observation from above, subsequent to the illegal search, as Officer Kreutz was not present at the time of the illegal search, but arrived sometime after.

Thus, the information given by Kreutz in the affidavit regarding the observation of marijuana by the anonymous maid was at least double hearsay. It was at least double hearsay because, according to the affidavit, the maid told somebody she had seen marijuana. (The maid may have told the manager.) The manager then told Officers Knoblock and Ralls about the management's "concern about items in the bath tub" (not specifically marijuana or even contraband) and then Officers Knoblock and Ralls told Officer Kreutz what the manager had told them and what had been told to the manager by the maid. Officer Kreutz then related all of this information to the magistrate.

Hearsay may be the basis for the issuance of a search warrant so long as there is a substantial basis for crediting the hearsay, Jones v. United



States, 362 U.S. 257, 270, 80 S.Ct. 725, 735, 4 L.Ed.2d. 697. The only substantial basis for crediting that hearsay is the corroborating observations made by Knoblock and Ralls during their illegal entry. But again, that information must be excised from the affidavit and cannot be used to determine probable cause, Dimuro, *supra*.

It is respectfully submitted that if a substantial basis is necessary for crediting single hearsay, something even more is required in the case of double hearsay. But nevertheless, State v. Torrez, 112 Ariz. 525, 544 P.2d. 207, holds that absent any demonstration within the affidavit of the reliability of the source of double hearsay information in support of a search warrant, such double hearsay cannot be considered in determining whether probable cause exists for issuance of the warrant. Certainly, the fact of emptying suitcases at a motel and coming out of a motel room with suitcases that appear heavy does not constitute a "substantial basis" for crediting hearsay, let alone double hearsay.



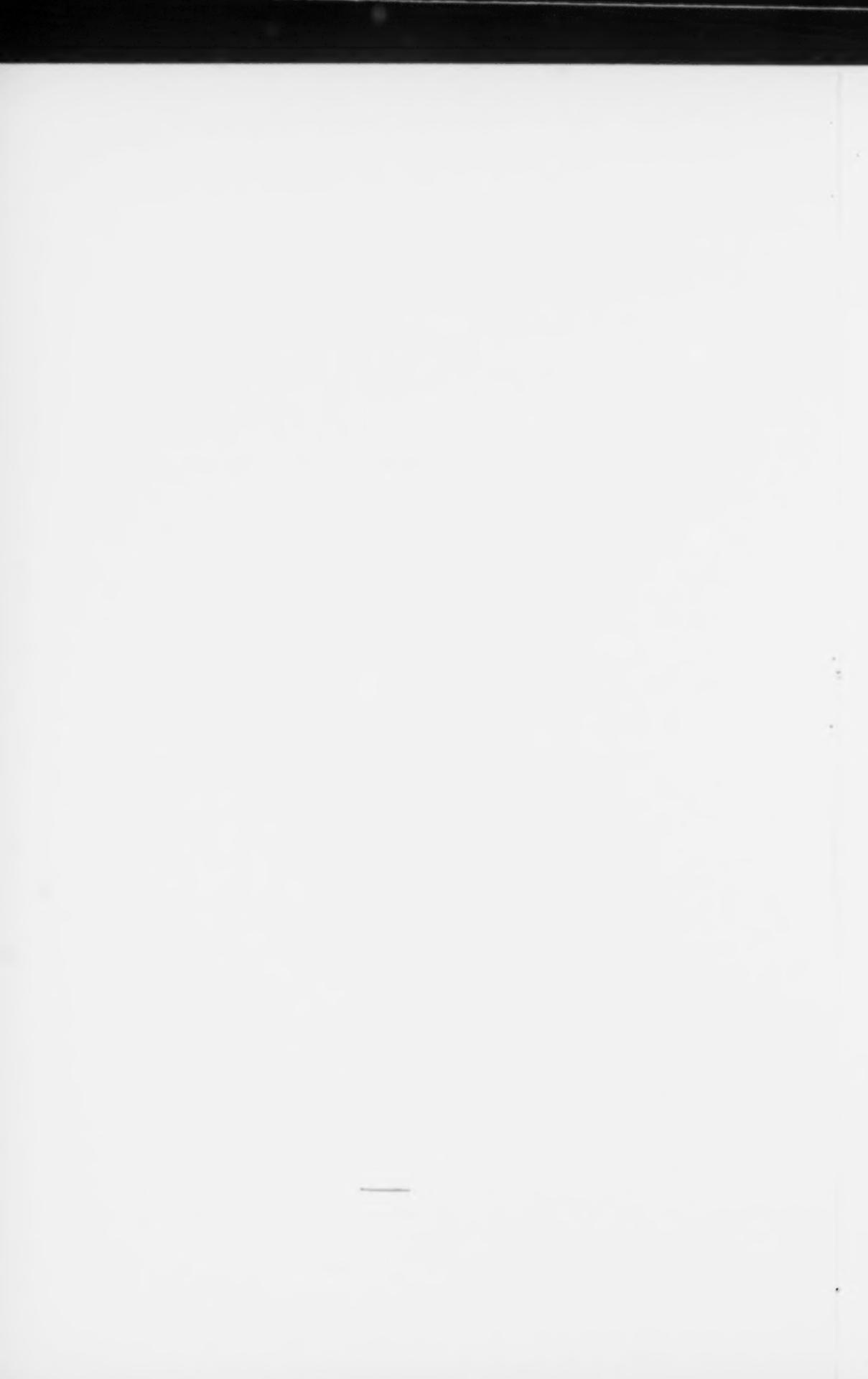
Because there is nothing left within the four corners of the affidavit that provides a "substantial basis" for crediting the double hearsay information regarding what the maid saw, that is, that the maid saw marijuana, the Court of Appeals' statement that "the observation of the officers outside the motel room were sufficient to establish probable cause that the marijuana had been transferred to suitcases within the car" does not follow (emphasis added). It does not follow because there is nothing to substantiate the double hearsay that there was ever any marijuana in the first place. Consequently, there cannot be probable cause that "the marijuana" was transferred (to suitcases within the car or anywhere else for that matter.)

CONCLUSION

Thus, even if the information in the search warrant affidavit about the anonymous informant's observations and the search warrant affiant's observations are untainted, the former is double

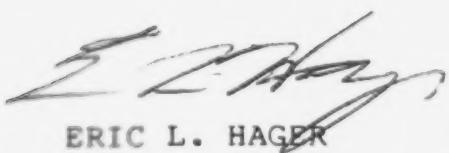


hearsay without a substantial basis and the latter is simply testimony of innocent conduct (that is, the unloading and loading of suitcases at a motel.) Because there is a lack of information within the four corners of the affidavit (after excising the illegally obtained information), the trial court erred in admitting evidence of the contraband and the Court of Appeals similarly erred in affirming the trial court's decision. The fruits of the illegal search should have been suppressed under Mapp v. Ohio, 367 U.S. 643, and also excluded as evidence which was tainted as fruit from the poisonous tree, Silverthorn Lumber Co. v. United States, 251 U.S. 385 (1920). Thus, the evidence should have been suppressed and petitioner's conviction should be reversed and/or remanded for



further proceedings.

Respectfully submitted,



ERIC L. HAGER

7322 North Oracle Road

Tucson, Arizona 85704

(602) 297-5111



APPENDIX

- Footnote 1, Telephonic Search Warrant/
Affidavit.....
- Footnote 2, Transcript of Suppression
Hearing, pg. 34, lines 1-12.....
- Footnote 3, Transcript of Suppression
Hearing, pg. 38, lines 6-11;
Telephonic Search Warrant/Affidavit,
pg. 3.....
- Footnote 4, Transcript of Suppression
Hearing, pg. 35, lines 1-15.....
- Footnote 5, Transcript of Suppression
Hearing, pg. 24, lines 16-25;
pg. 25, line 1.....
- Footnote 6, Telephonic Search Warrant/
Affidavit.....
- Footnote 7, Transcript of Suppression
Hearing, pg. 37, lines 7-24.....
- Footnote 8, Memorandum Decision of
Arizona Court of Appeals, Division Two.....
- Footnote 9, Transcript of Suppression
Hearing, pg. 7, lines 14-20; pg. 37,
lines 12-19.....



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,) 2 CA-CR 4377
) DEPARTMENT B
Appellee,) PIMA County
v.) Cause No. CR-15791
)
WILLIAM WARD KNAPP,) ORDER
) (Mandate)
Apellant.)

The MEMORANDUM DECISION of this Court in the above-entitled matter was filed on July 23, 1986.

A Motion for Reconsideration, filed August 7, 1986, was DENIED by Order of this Court on September 2, 1986.

A Petition for Review, filed September 25, 1986, was DENIED by Order of the Arizona Supreme Court on January 20, 1987.

IT IS THEREFORE ORDERED in conformity with the
EXHIBIT A



MEMORANDUM DECISION attached hereto.

IT IS FURTHER ORDERED that a certified copy of this order together with a copy of the MEMORANDUM DECISION be forwarded to the Clerk of the Superior Court for PIMA County; that a copy of this order be sent to the above-named parties or their attorneys of record; to The Honorable Harry Gin Judge Pima County Superior Court, as well as the PIMA County Attorney.

DATED: February 4, 1987

s/ Joseph M. Livermore

Joseph M. Livermore

Presiding Judge

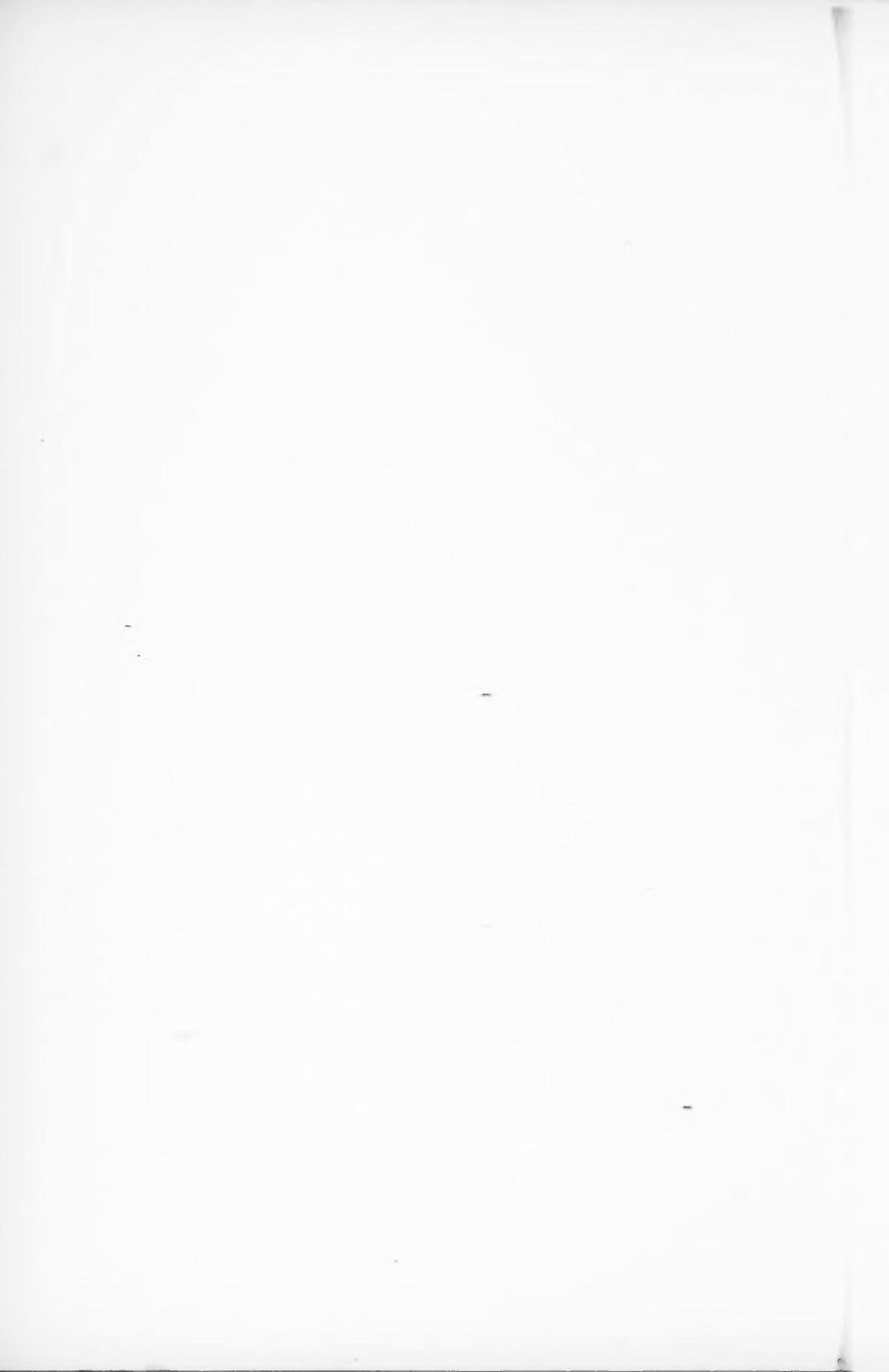
ORDER (Mandate)

Page Two

2 CA_CR 4377

PIMA County Cause No. CR-15791

STATE OF ARIZONA



COURT OF APPEALS

I JOYCE A GOLDSMITH, Clerk of the Court of Appeals Division Two of the State of Arizona, hereby certify the above to be a full and true copy of the above Order (Mandate) made and entered in the above-entitled cause by said Court on the 4th day of February, 1987.

IN WITNESS WHEREOF, I
have hereunto set my hand
and affix the seal of said
Court this 4th day of
February, 1987.

s/ Joyce A Goldsmith

JOYCE A. GOLDSMITH, Clerk

Copy to:

Honorable Robert K. Corbin



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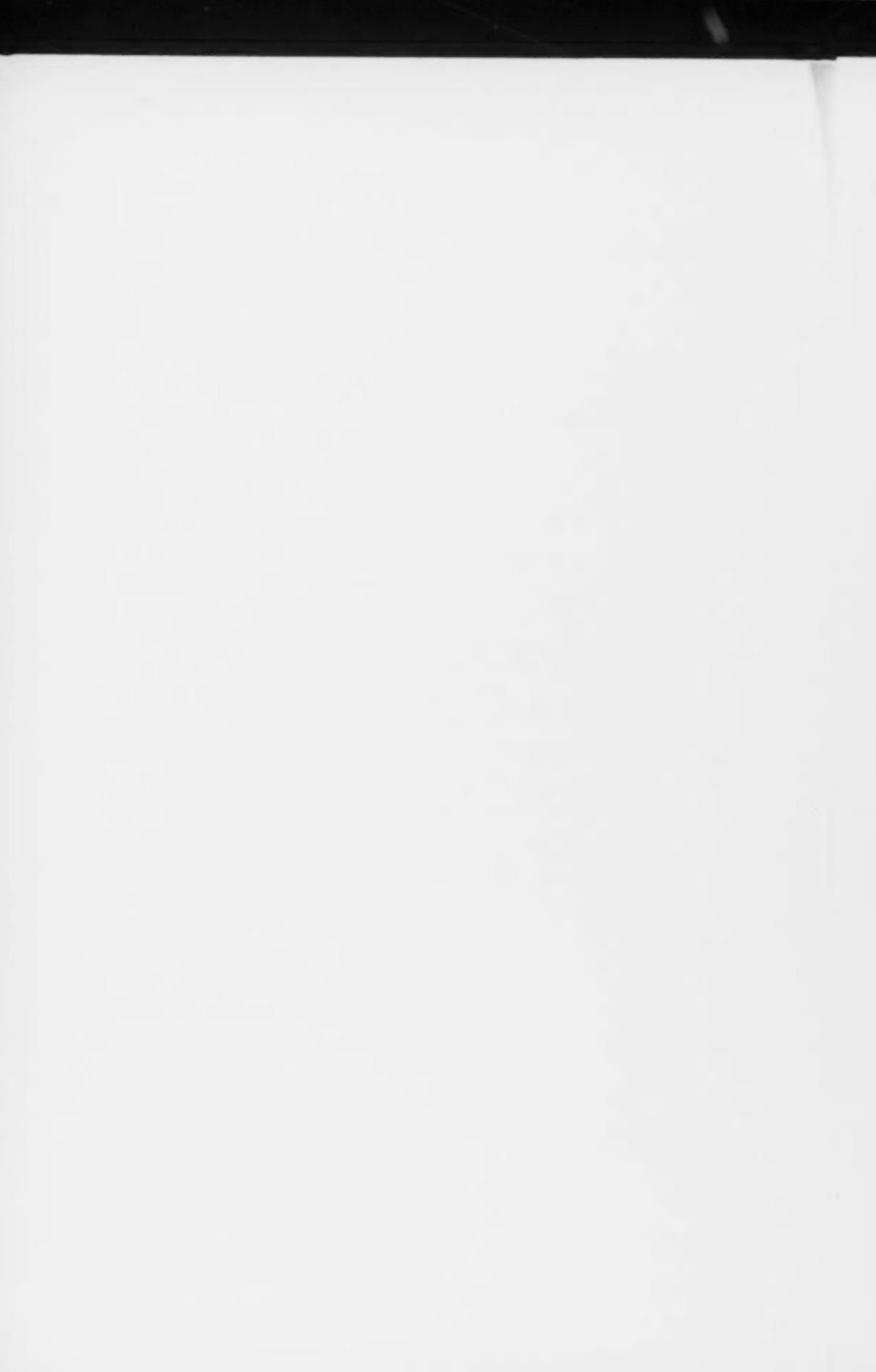
Honorable Harry Gin
Judge, Pima County Superior Court
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Honorable Stephen D. Neely



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IN THE COURT OF APPEALS
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DIVISION TWO

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s/ Joseph M. Livermore

Joseph M. Livermore

Presiding Judge

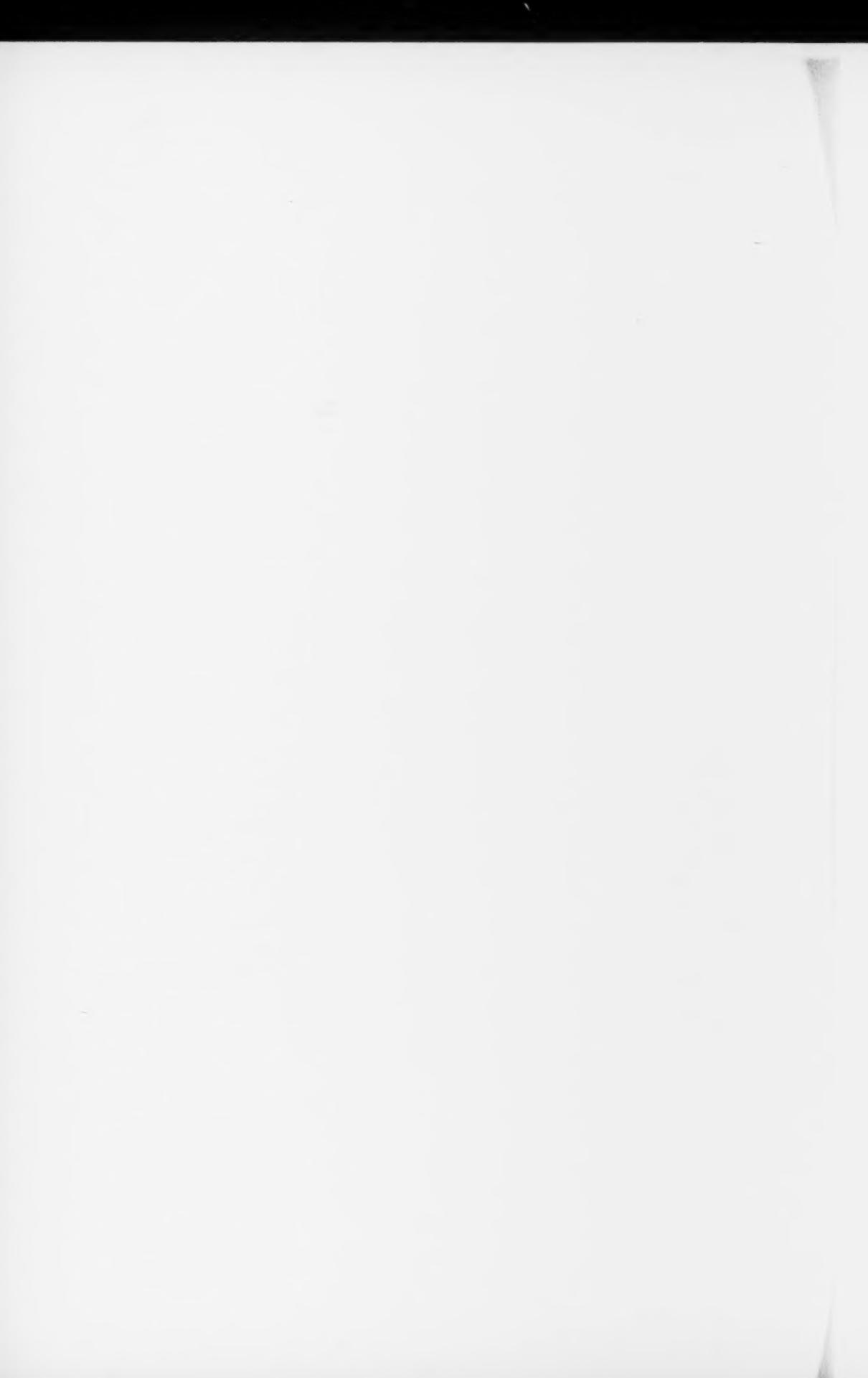
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Page Two

2 CA_CR 4377

PIMA County Cause No. CR-15791

STATE OF ARIZONA



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IN WITNESS WHEREOF, I
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and affix the seal of said
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s/ Joyce A Goldsmith

JOYCE A. GOLDSMITH, Clerk

Copy to:

Honorable Robert K. Corbin



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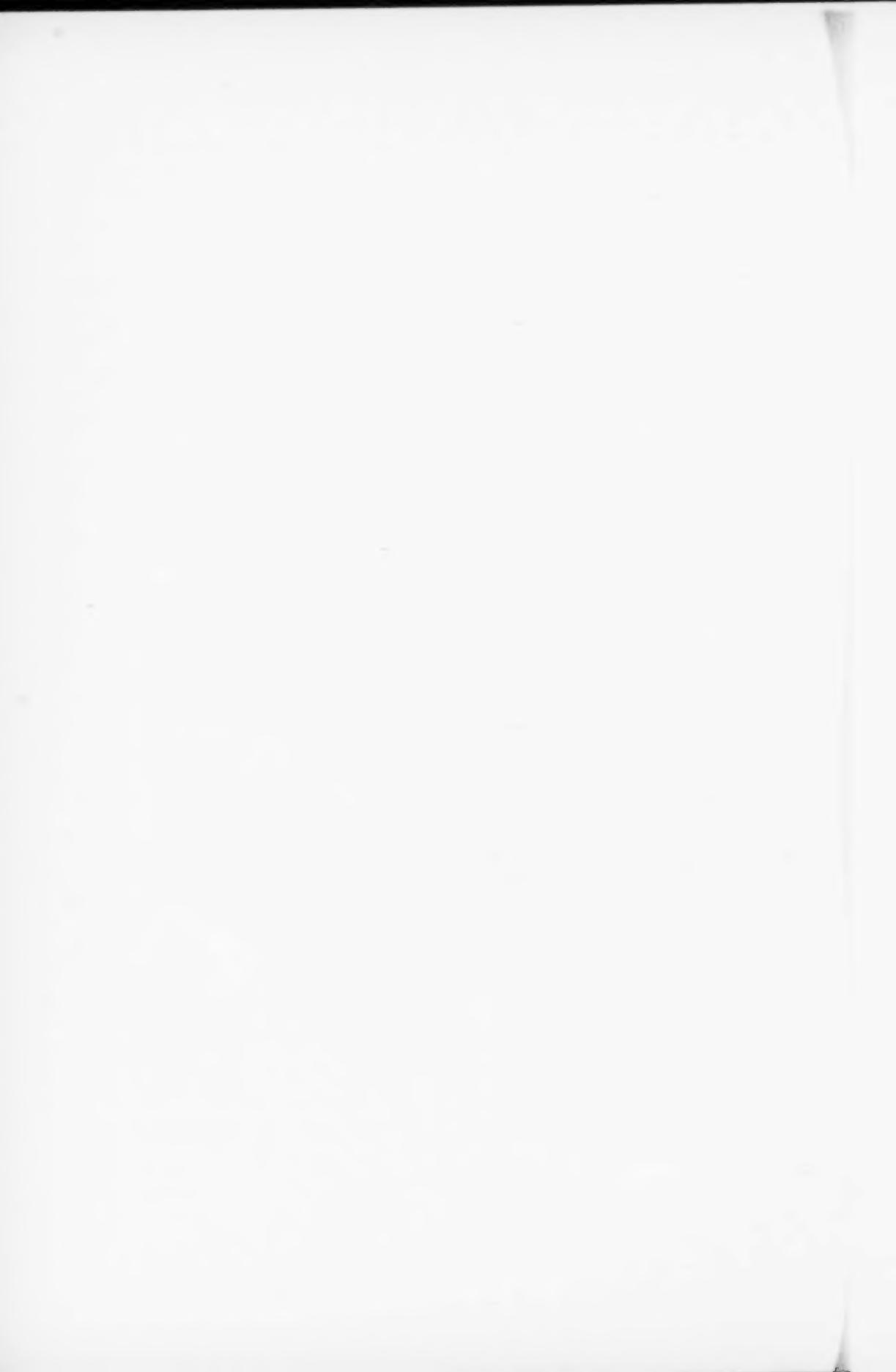
Honorable Harry Gin
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Honorable Stephen D. Neely



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[Certified Copy]



TELEPHONIC SEARCH WARRANT

Phone Ringing:

JUDGE ADAMS: Hello.

KREUTZ: Hello, Judge Adams?

JUDGE ADAMS: Yes.

KREUTZ: This is Office Kreutz.

JUDGE ADAMS: Yes.

KREUTZ: I have a Telephonic Search Warrant I need to obtain.

JUDGE ADAMS: Alright, do you solemnly swear the information that you're about to give me is true?

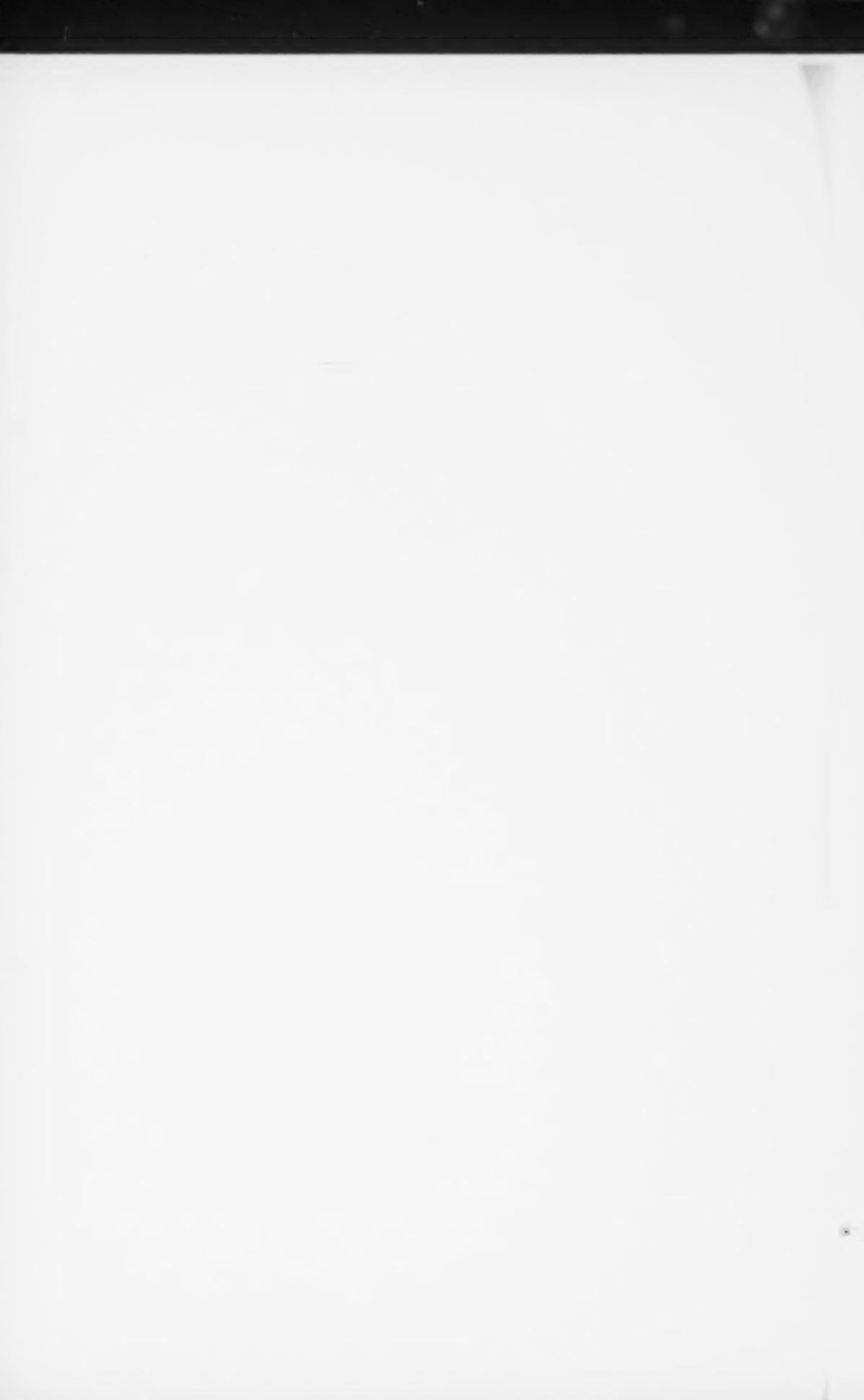
KREUTZ: Yes, I do.

JUDGE ADAMS: Go ahead.

KREUTZ: This is OFFICER KREUTZ of the Metro Narcotics Squad. I am calling you on June 29, 1985, with OFFICER RALLS #21686 standing by as a witness.



The time is now 1817 hrs. I am calling for a Telephonic Search Warrant and have just probable and reasonable cause to believe that there is now in the possession of WILLIAM WARD KNAPP, 9-20-61, and also on the premises located at 1365 W. Grant, rooms #127 and #129, which is the Holiday Inn North. This consists of a motel complex. These rooms are located on the Southwest corner of Grant and I-10 facing East. The rooms #127 and #129 are single occupancy rooms, each containing one bedroom and one bathroom area. Also in the vehicle a 1985 Chevrolet, 4 dr. light green in color, Arizona plate CNT 534.



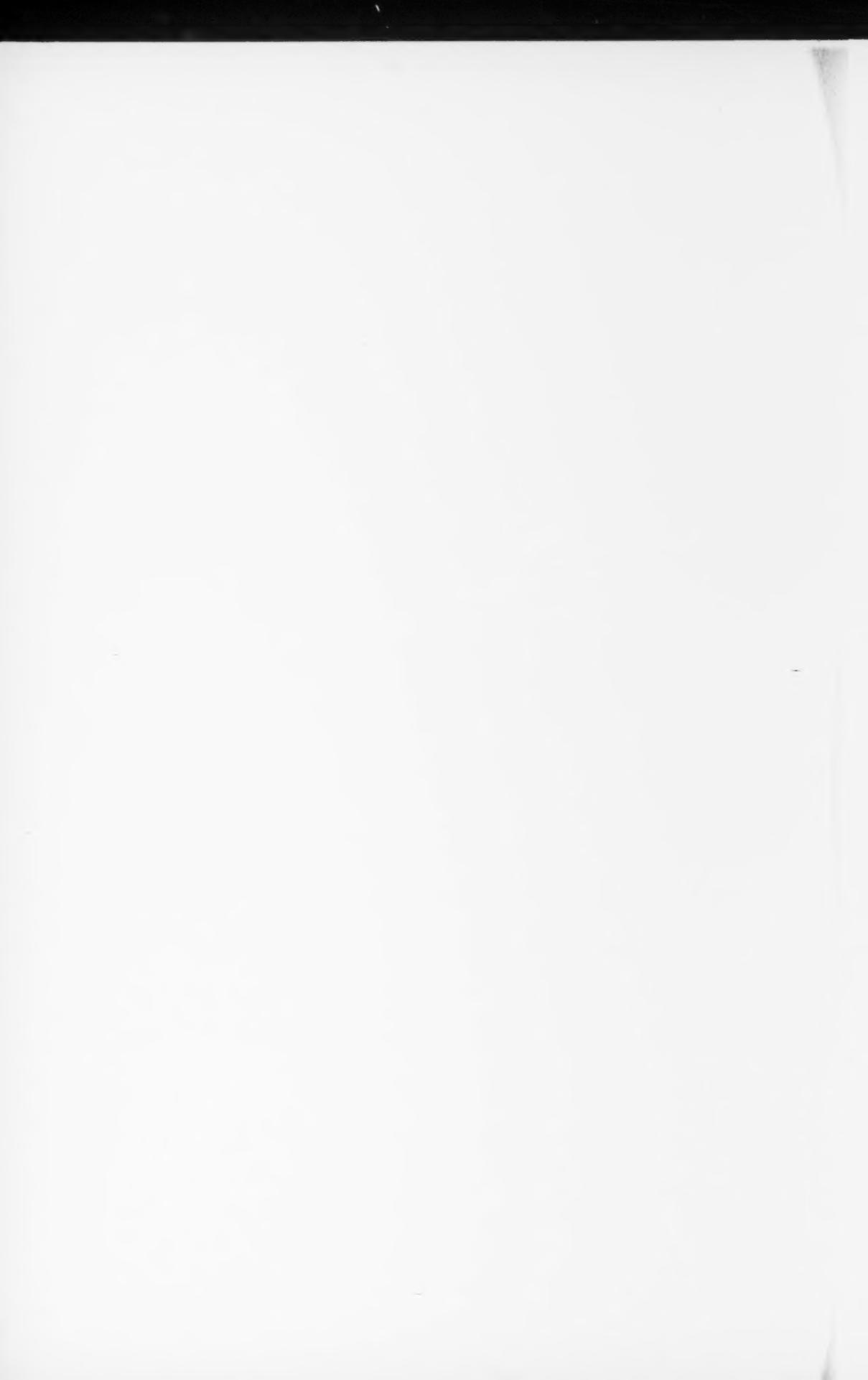
The following property to-wit:

1. Quantities of
Marijuana
2. Scales of weighing
narcotics
3. Indicia of ownership
for the rooms and
also for the car
4. Packaging equipment
for marijuana
processing and
monies.

Together with other fruits, instrumentalities
and evidence of the crimes of unlawful sale of
marijuana and unlawful possession of marijuana. As
set-forth in this affidavit that I, KURT KREUTZ,
your affiant am a peace officer in the State of
Arizona, employed by the Tucson Police Department.
I have been a police officer for six and
three-quarter years and have the following special



training and experience. I graduated from the Tucson Police Academy in 1979, and during the course of training at the Tucson Police Academy received extensive background information in regards to the location and identification of marijuana. During the course of employment with the Tucson Police Department I have been in the Uniform Division also the Detective Division and have been in the Adam One Division. During the course of my employment in these locations in the Tucson Police Department I have had numerous contacts and arrests involving marijuana and the identification of marijuana. For the last thirteen months I have been assi[sic] to the Metro Narcotics Squad which is located at the Department of Public Safety. During the course of my training in Metro I have been trained in the identification of marijuana and other narcotics. During the course of my training at the Department of Public Safety for Metro Narcotics I have attended the advance DEA Narcotics School and worked uncover in numerous contacts involving marijuana purchases and also

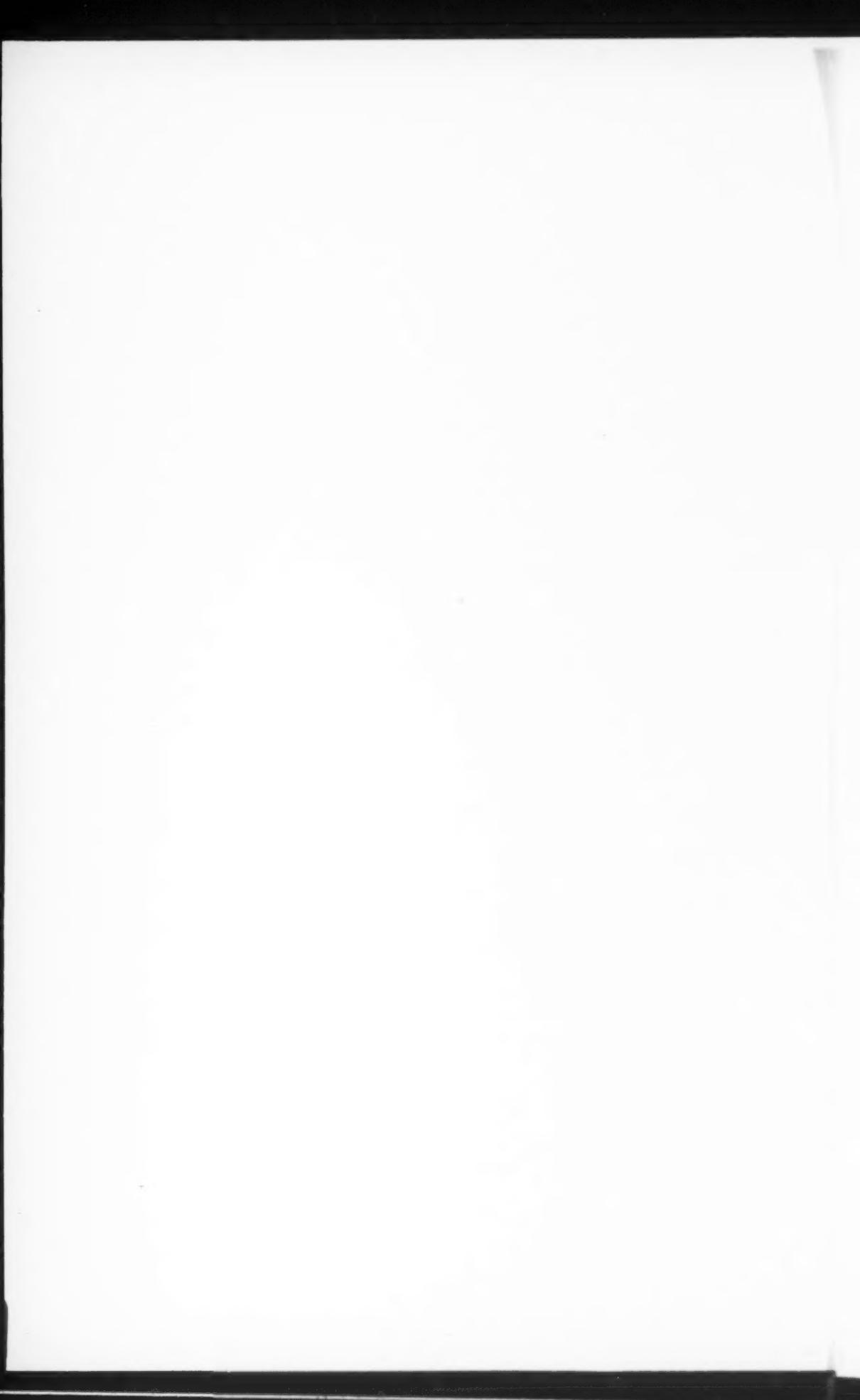


indentification of marijuana. At this time I am investigating the crimes of unlawful possession of marijuana for sale and unlawful possession of marijuana which I believe to have been committed on the 29th of June 1985, in Pima County. Based upon the following reasons:

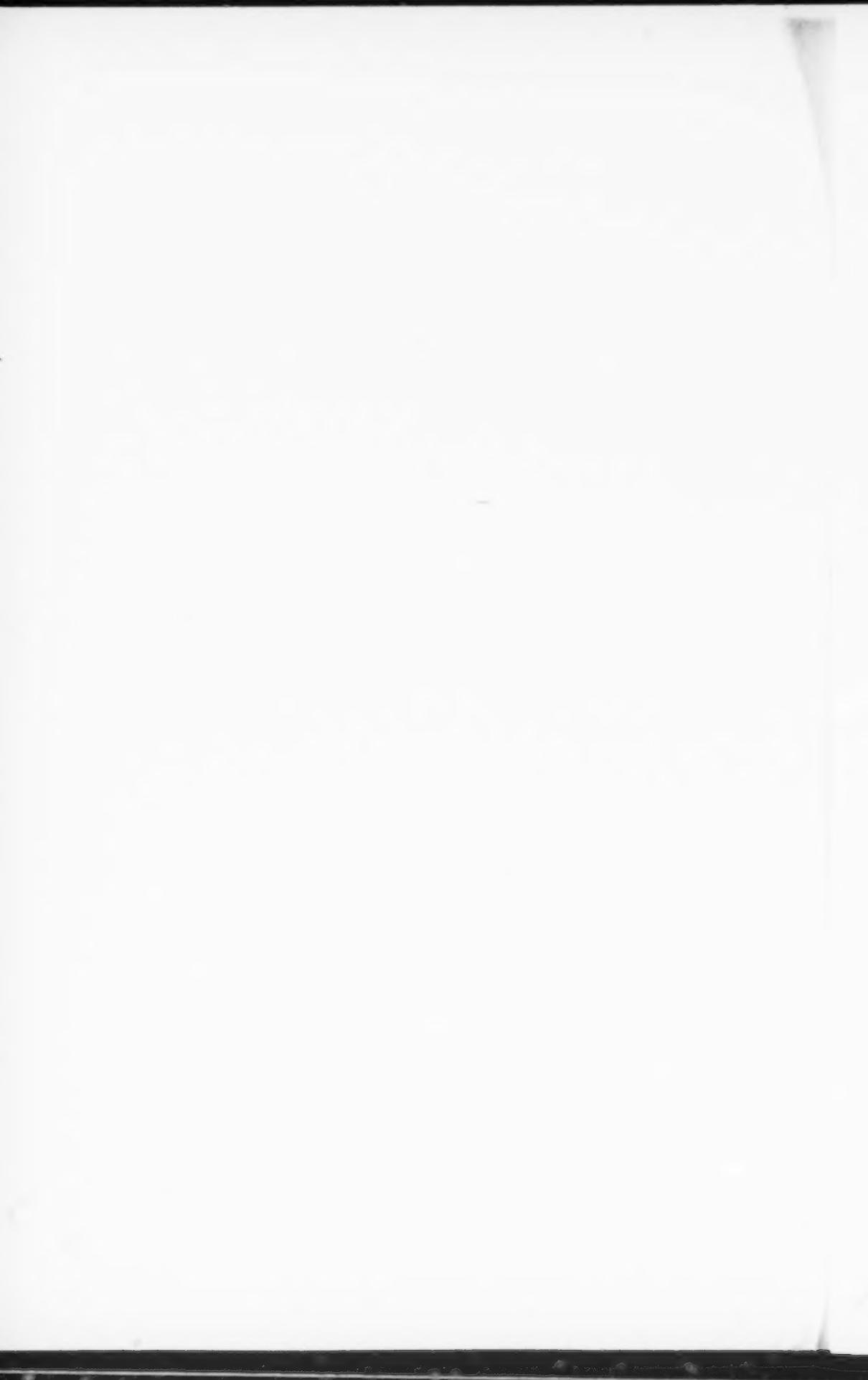
Within the last seventy-two hours an employee, which is a maid at the Holiday Inn North, located at 1365 W. Grant Rd. entered room #129 to clean. She observed a quantity of marijuana in the bathtub in the room #129. Contact was made to the Tucson Police Department by the manager of the Holiday Inn. OFFICERS RALLS and KNOBLOCK were taken to room #127 and room #129 by the manager. These rooms were



rented by the same person known to the employee of the Holiday Inn front desk area as a subject named ROBERT PECHULIS. Number #129 was entered due to the concern of the management as to what items were located in the bathtub area. Number #127 was unable to be entered due to the interior door between the rooms and also the exterior door to that room being locked and no known master key available to enter that room. Both rooms are connected by interior doors and once again the interior door to #127 between that and #129 was locked. Upon OFFICERS RALLS and KNOBLOCK entering this room #129, they

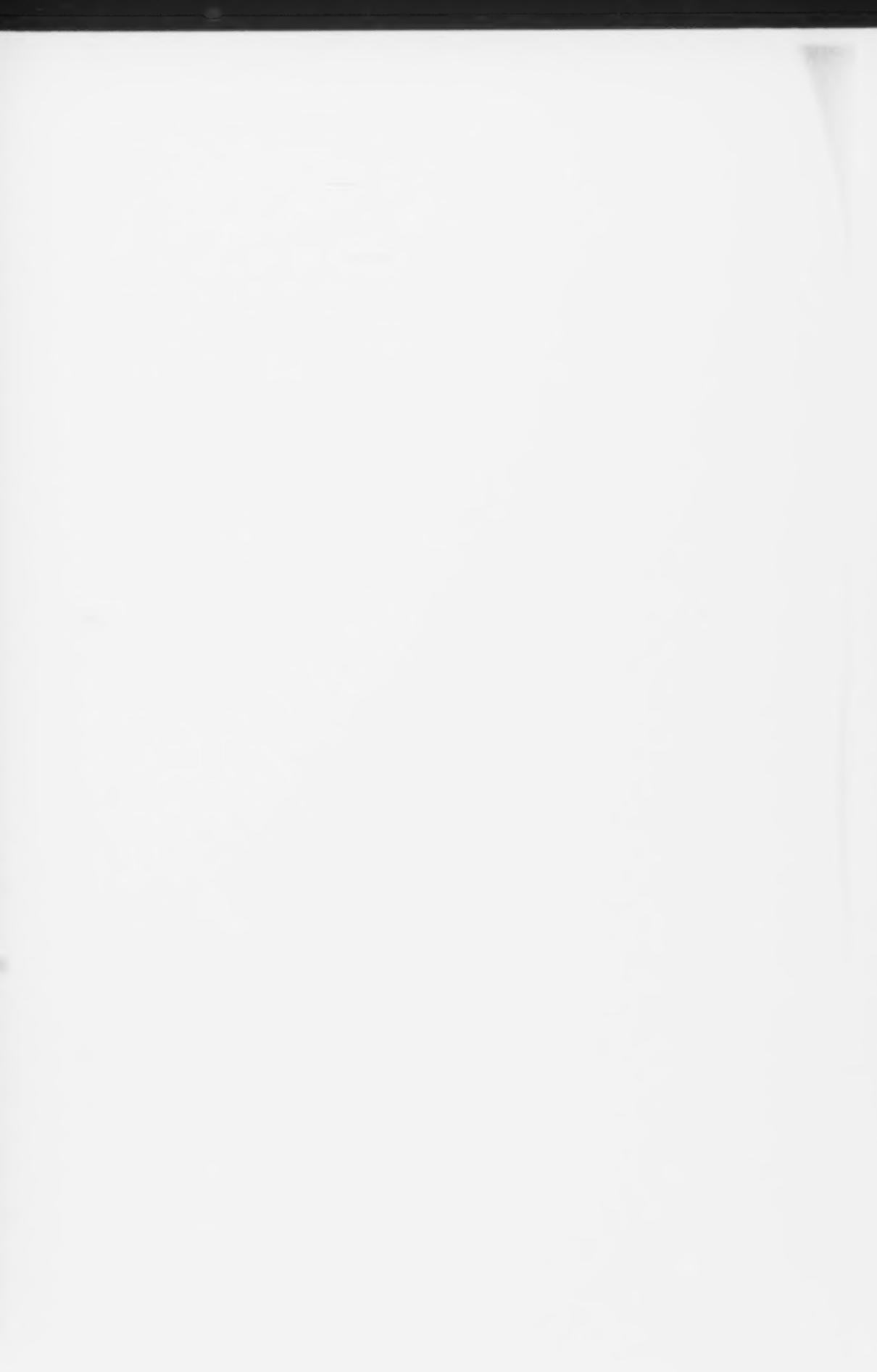


observed a quantity of what appeared marijuana located in the bathtub area. This marijuana type substance was observed in clear plastic sealed bags and once again was located in the bathtub of the single bathroom location in room #129. After this was observed the room was left and a surveillance was maintained from room #231 which is directly above rooms #127 and #129. A subject matching the description of the subject who had rented the rooms of #127 and #129 and had given the name of ROBERT PECHULIS to the Holiday Inn front desk arrived at the location on the eastside of the Holiday



Inn Motel. He was operating a vehicle which was a light green 4 dr. '85 Chevrolet with an Arizona license plate CNT 534, which was the same plate which was given by the subject who rented the rooms #127 and #129 on that previous date of June 28, 1985. As the subject in the vehicle arrived in front of rooms #127 and #129 a suitcase was emptied in the vehicle and numerous clothing items were removed from that suitcase making it empty. Also, numerous boxes which were collapsed were carried into room #129 by the same subject along with the emptied suitcase. An additional paperbag

containing unknown items were carried into that same room. A short while later this subject came out of room #129 carrying the same suitcases a this time the suitcase appeared to be no longer empty and the subject was having difficulty carrying that item. Also, the subject was carrying a large grey duffle-bag which appeared to be very heavy also. These items were placed in the same vehicle which is the '85 Chevrolet license plate CNT 534 in the trunk area and also the rear seta area of that vehicle. The subject began leaving the [sic] and was stopped and arrested. The vehicvle and the rooms



were sealed for the securance
of the search warrant.

I believe the property I previously described in
this affidavit is presently:

(xx) on the premises located
at 1365 W. Grant, rooms #127 and #129.

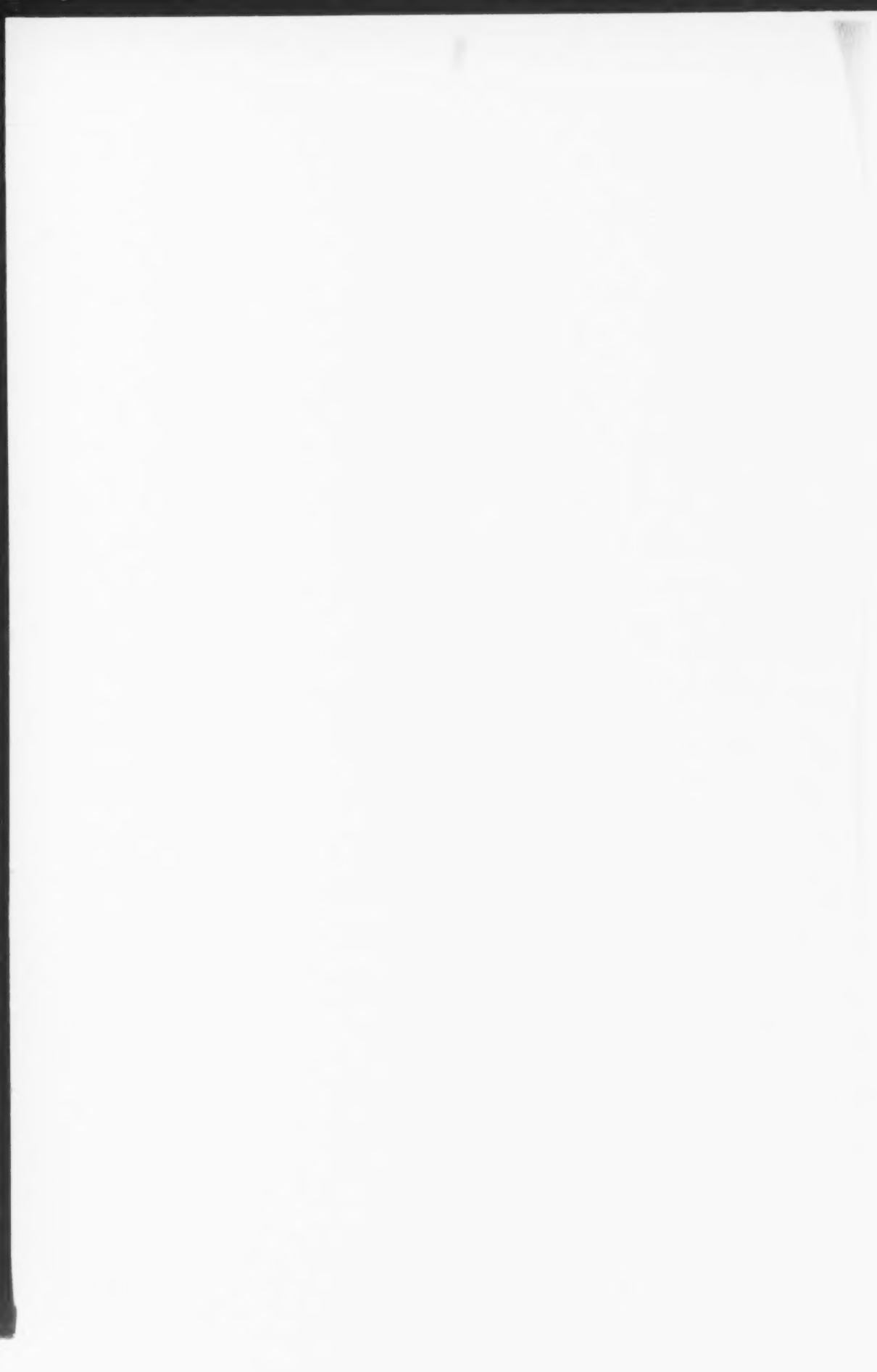
(xx) which consists of motel
rooms, single occupancy each, containing one
bedroom and one bathroom in each connected by an
interior joint door.

(xx) on the person of WILLIAM
WARD KNAPP, 9-20-61.

(xx) on the vehicle described
as a 1985 Chevrolet 4 dr., light green in color,
Arizona license plate number CNT 534.

My belief that the property is presently at this
location is based upon the following reasons which
I have already explained.

Based on the preceding facts I OFFICER KURT KREUTZ
request that a telephonic search warrant be issued.
This concludes my affidavit your honor.



JUDGE ADAMS: Go ahead and read the warrant.

KREUTZ: I will now read verbatim the Standard Arizona Duplicate Original Search Warrant, State of Arizona, indicating which spaces I have completed and which ones I have left blank.

STANDARD ARIZONA DUPLICATE ORIGINAL SEARCH WARRANT

State of Arizona

No. _____

County of Pima, State of Arizona

To any peace officer in the State of Arizona:

Proof by affidavit having been made this day before me by KURT KREUTZ, I am satisfied that there is probable cause to believe that:

(xx) on the person of WILLIAM WARD KNAPP,
9-20-61

(xx) on the premises known as 1365 W. Grant Rd. (Holiday inn North) rooms #127 and #129.

(xx) in the vehicle describe as 1985 Chevrolet

4 dr. light green in color, Arizona CNT 534
in the City of Tucson, County of Pima, State of
Arizona, there is now being possessed or concealed
certain property or things described as:

1. Quantity of marijuana
2. Indicia of vehicle ownership and room
registry.
3. Scales
4. Packaging and shipping
equipment for marijauna
processing.
5. Monies

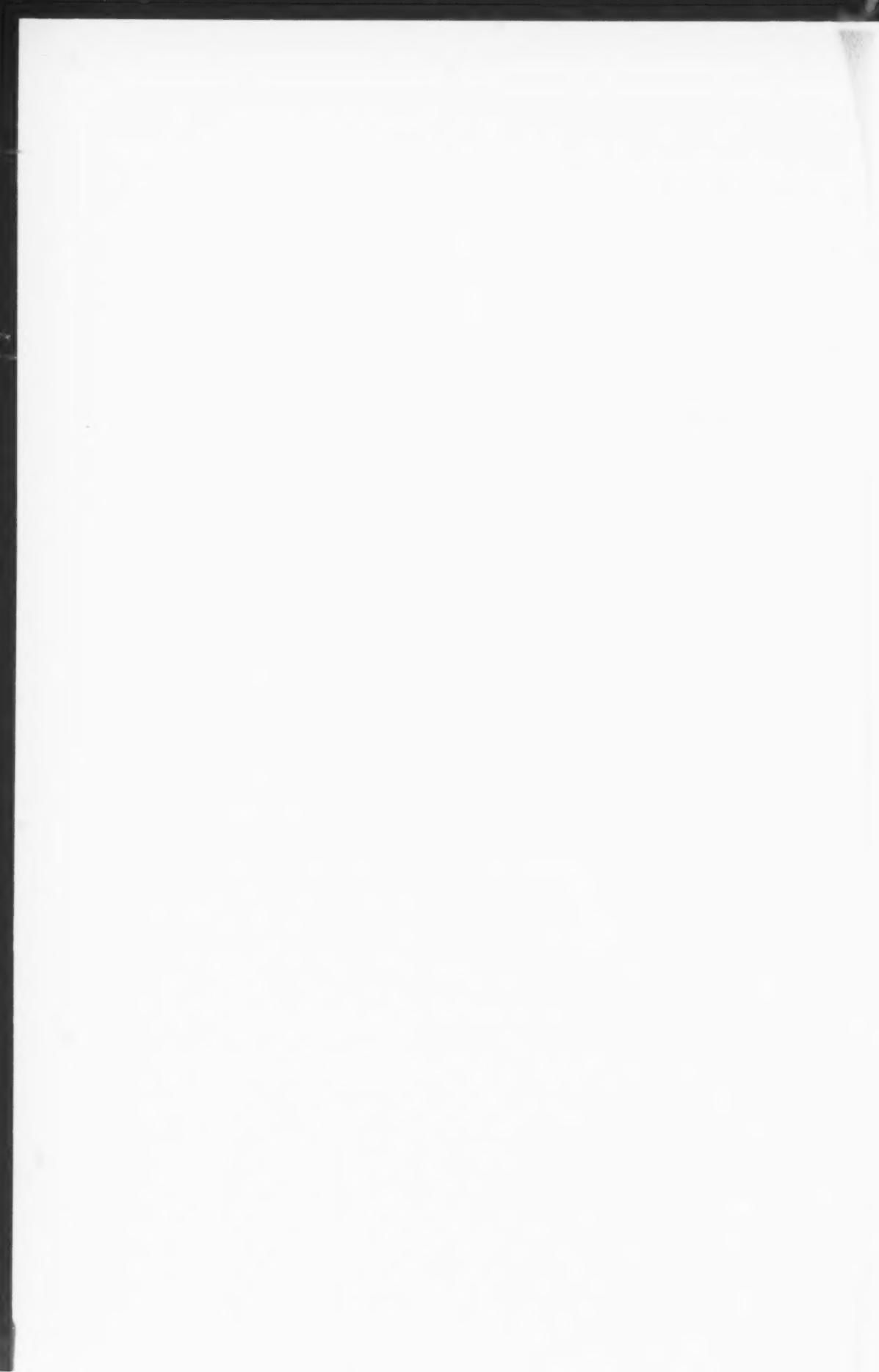
which property or things:

() were stolen or embezzled

(xx) were used as a means for committing a
public offense.

(xx) is being possessed with the intent to use
it means of committing a public offense.

(xx) are in the possession of WILLIAM WARD
KNAPP, to whom it was delivered for the purpose of
concealing it or prevent it from being discovered.



(xx) consists of any item or constitute any evidence which tends to show that a public offense has been committed, such as more fully described in the affidavit, to-wit: unlawful possession of marijuana, unlawful possession of marijuana for sale, which offense occurred on or about the 29th of June, 1985, in Pima County.

YOU ARE THEREFORE COMMANDED:

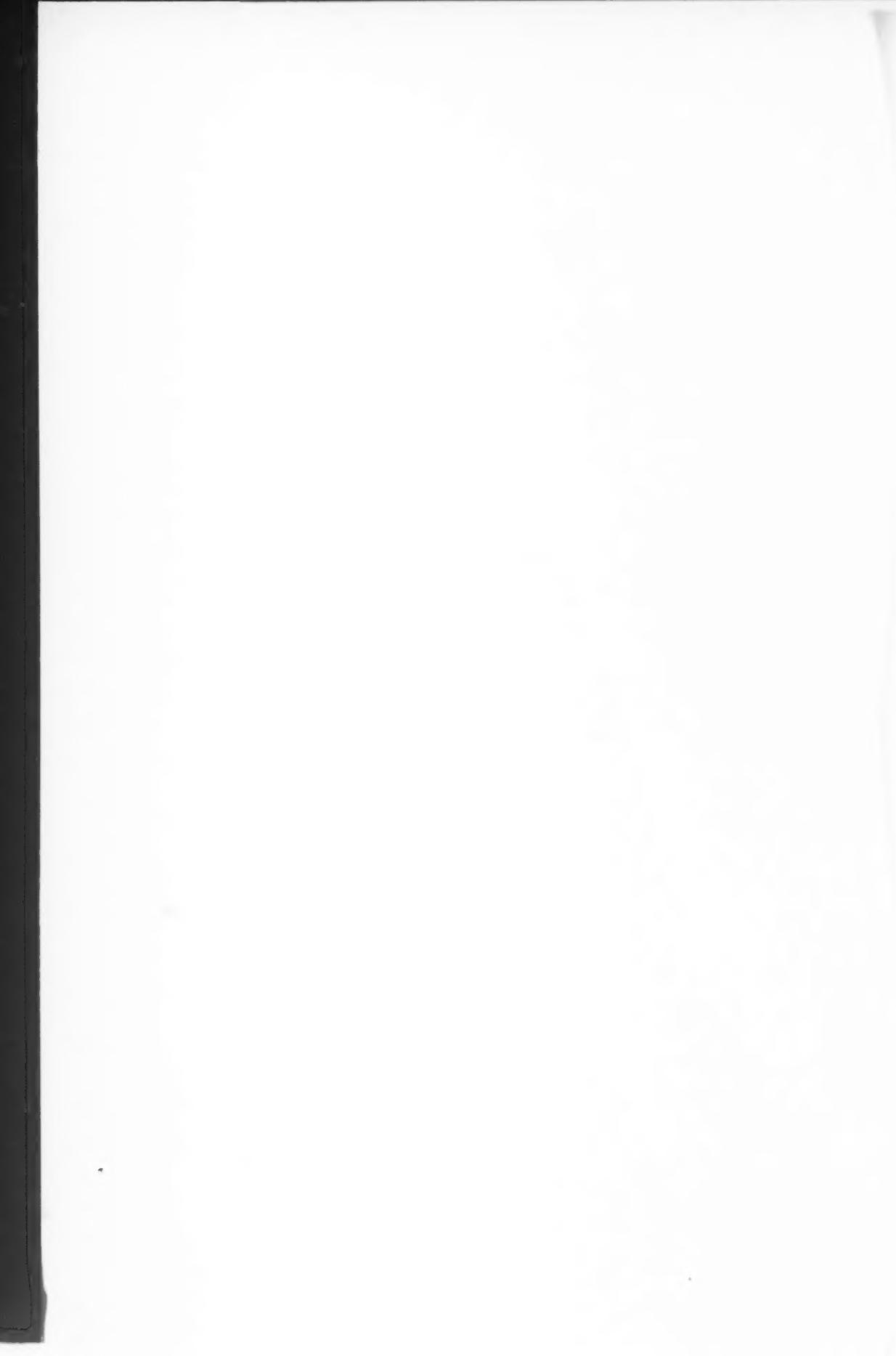
(xx) in the daytime (excluding the time period between 10:00 P.M. and 6:00 A.M.

() or nighttime (good cause therefore having been shown to have a search of the above-named or described person(s), premises, and vehicles for the herein-above described property or [sic] and if you find the same or any part thereof, to retain such in your custody or in the custody of the agency you represent, as provided in A.R.S. 13-3920.

Return this warrant to me within five (5) days
of the date thereof, as directed by A.R.S. 13-3918.

Given under my hand and dated this 29th day of
June, 1985.

KREUTZ: Should I indicate Judge



Adams?

JUDGE: Yes, and it's no 's' ADAM.

KREUTZ: ADAM. No 's'?

JUDGE: Right.

KREUTZ: Of City of Court?

JUDGE: Right.

/s/JUDGE ADAM

Judge, Justice of the Peace
or Magsitrate of City Court.

KREUTZ: That concludes the reading of
the Standard Arizona
Duplicate Search Warrant. Do
I have your permission to
sign your name?

JUDGE: Yes, you do.

KREUTZ: I am signing my name KURT
KREUTZ, date June 29, 1985,
time now is 1832 hrs. beneath
yours.



/s/JUDGE ADAM

/s/ KURT KREUTZ, June 29, 1985

/s/ CLAUDE RALLS #21686

KREUTZ: And I will also have OFFICER
RALLS #21686 sign as a
witness.

JUDGE: Okay.

KREUTZ: Thank you very much.

JUDGE: You're welcome. . . bye-bye.

KREUTZ: Bye. . .

/lcv



Q What did you do when you got to the Holiday Inn?

A I went to the Holiday Inn and went to an upstairs room, which Officer Ralls and Officer Knoblock were already situated at, and came in contact with both those officers.

Q And did you do anything further?

A In conversation with those offices, I was made aware of what had been seen by a maid at themotel in Room 129, I believe it was, and, also, that Room 127 was secured and unable to be entered by anyone because of the doors being locked from the inside.

I was informed as to a description of a vehicle of a person that was registered at that -- those two rooms and also a description of that person that was registering at those rooms, and at that time, I contacted the Tucson Police Department dispatcher and also contacted a uniformed sergeant in regards to what was going on at the motel and the need for two additional officers to be set up



in the area of the motel in case the person in the vehicle came back.

Q Did the person in the vehicle ultimately come back?

A Yes, he did.

Q What did you do at that point?



further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

MR. HAGER:

Q Officer Kreutz, in your securance of a search warrant, you used information based on what Officers Knoblock and Ralls had seen when they initially entered the room, didn't you?

A Yes, in addition to what was told to me and what I had observed.

Q Now, this telephonic search warrant: these are all your words, and this is your doing completely, isn't it?

A And Judge Adam's, yes.

Q Okay. But, I mean, you're the only officer that conveyed the information to the judge?

A Yes.

Q Correct?

Okay. Now, does this appear to be the search warrant -- telephonic search warrant that was eventually secured?



A As far as I can tell, yes.

Q You graduated from Tucson Police Academy
in '79, extensive background in regards to
location, I.D. of



A At that time, I informed the officers that were set up east and west of the location on Grant Road that the vehicle was at the motel and from the vantage point that we had from the motel room, we were able to observe the driver of the vehicle emptying a suitcase in the rear seat area of his vehicle and also bring items into the motel room Number 129 from his vehicle, and shortly thereafter, he came out, carrying the items, same suitcase and bags, but they appeared filled with something at that time.

Q Did they appear filled when he took them in?

A No, they did not.

Q So it appeared they got filled while he was inside and was carrying stuff out to his car?

A Yes.

Q Okay.

A And then as he got in the vehicle, during the course of this time, he was looking around excessively in all different directions as if



watching for someone, and he got into the vehicle, backed the vehicle away from the slot that was directly in front of the Rooms 127 and 129 and began driving out of the parking lot in a northbound direction.

Q Officer, let me clarify just one thing.

You said that he took suitcases into the motel



Q Was there ever a time when you asked the maid to go in and check the room to look for anything?

I mean, in other words, would it be fair to assume that this was not activity that was initiated by the police in the beginning?

A Yes, Ma'am. We never initiated the activity. We were summoned there by the motel.

MS. NYGAARD: Okay. That's all I have, Your honor.

THE COURT: When this individual arrived, you arrested him; is that right?

THE WITNESS: He went into the room first and then came back before the arrest was made.

THE COURT: With the suitcases?

THE WITNESS: Yes, sir.

THE COURT: What were the grounds for the arrest at that point?

THE WITNESS: We -- one of the suitcases that he took in was a collapsible one and when he came back out, that was full. All his clothing --



well, I don't know if all of them, but there was a big pile of clothing in the back seat of the car, sir, so we assumed --

THE COURT: Well, what I'm getting at, was your observing the marijuana in the bathtub one of the reasons for the arrest?



THE WITNESS: Yes, sir.

MR. HAGAR: Your honor, I just have a couple of more questions

THE COURT: Okay. Go ahead.

RECROSS EXAMINATION

BY MR. HAGER:

Q Ms. Nygaard asked you if one of the reasons you went in initially was for officer safety; is that correct?

A Yes, sir.

Q Okay. But according to your report, it says in your report that "No one was in the room, so we went into 129".

Did the maids tell you that there were people in there or that there were guns in there or anything to that effect?

A The maids told us that they had seen different people come in and out of the room.

Q Did they say there was anybody in there at the present time?

A So we could not be certain whether there



was or wasn't for sure because there possibly could have been somebody in the adjoining room that could have gone into the room.



you spoke to -- first of all, was it a telephonic search warrant?

A Yes. It was from the Adam One Store Front.

Q And was the judge that ultimately authorized the warrant Karen Adam?

A Yes, it was.

Q And did you specify for her the reasons that you believed gave you probable cause for the search?

A Yes, I did.

Q Okay. Could you narrate them for us at this time?

A The warrant was obtained or explained to Judge Adam in regards to the maid seeing a large quantity of marijuana in the bathtub of the motel room Number 129, and that Officers Ralls and Knoblock were contacted by the manager of the motel and on doing a security check of Room 129, they also observed the marijuana in the bathtub, and due to that information, that's how the warrant was



obtained.

Q Okay. Did it also have -- did part of the probable cause also consist of the fact that you had observed the suspect carrying empty items into the room and full items out of the room?

A Yes, it did.

MS. NYGAARD: I don't believe I have any



rented the room was, what name was given?

A No, I don't remember right now.

Q Do you recall whether that was information that you put into your report?

A I am not positive. I would have to look at my report to see.

Q Okay. Was the name -- do you remember whether the name that was on the registration slip was William Knapp?

A No. I remember that was not the name that was on the registration.

Q Okay. What did you do next after you went upstairs?

A After we went upstairs, we contacted the police department and requested that we could see if we could get ahold of someone that worked with the Metro Narcotics Squad, and Officer Kreutz telephoned us there at the motel and he talked to -- I believed he talked to Officer Ralls, then he -- Officer Kreutz responded to the motel, also.

Q Okay. What happened after Officer Kreutz



got there?

A After Officer Kreutz got here, we were watching out and we observed the vehicle which was registered on the registration slip -- we identified it



No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner

v.

THE STATE OF ARIZONA, Respondent

CERTIFICATE OF SERVICE

I, Eric L. Hager, a member of the Bar of this Court, hereby certify that on this 6th day of April, 1987, threes copies of the Writ for Certiorari in the above-entitled cases were mailed, first class postage prepaid, to Robert K. Corbin, Attorney General 1275 West Washington Street, Phoenix, Arizona 85007, counsel for the respondent herein. I further certify that all parties



required to be served have been served.



Eric L. Hager
7322 North Oracle Road
Tucson, Arizona 85704
(602) 297-5111
Counsel for Petitioner



No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner

v.

THE STATE OF ARIZONA, Respondent

AFFIDAVIT OF MAILING PETITION FOR CERTIORARI

Eric L. Hager, being duly sworn,
deposes and says:

I am a member of the Bar of the
Supreme Court of the United States.

On April 6, 1987, at approximately
10:00 p.m., I deposited with the U. S. Postal
Office, Main Branch, 1501 South Cherrybelle
Stravenue, Tucson, Arizona, an envelope addressed
to the Clerk of the Supreme Court of the United
States, first-class postage prepaid, containing the



copies of the petition for certiorari in the
above-entitled case.



Eric L. Hager
7322 North Oracle Road
Tucson, Arizona 85704
(602) 297-5111

Subscribed and sworn to before me
this 6th day of April, 1987, by Eric L. Hager.


Susan Clarke Cordero
Notary Public

My Commission Expires:
My Commission Expires May 29, 1989

NO. 86-1710

Supreme Court, U.S.
FILED

JUN 16 1987

JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner,

v.

THE STATE OF ARIZONA, Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT
OF CERTIORARI TO THE
ARIZONA COURT OF APPEALS, DIVISION TWO

ERIC L. HAGER
7322 North Oracle Road
Tucson, Arizona 85704
(602) 297-5111

Counsel of Record

ERIC L. HAGER
7322 North Oracle Road
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(602) 297-5111

Counsel for Petitioner


ERIC L. HAGER

June 5, 1987

6/16/87

IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	NO. 2 CA-CR 4377
)	Department B
vs.)	
)	(PIMA County
)	Superior Court
WILLIAM WARD KNAPP,)	NO. CR-15791
)	
Appellant.)	<u>ORDER</u>
)	

The above-entitled matter was duly submitted to the Court. The Court has this day rendered its MEMORANDUM DECISION.

IT IS ORDERED that the MEMORANDUM DECISION be filed by the Clerk.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the MEMORANDUM DECISION be sent to each party appearing herein or the attorney for such party and to the Honorable Harry Gin, Judge, Pima County Superior Court.

DATED this 23rd day of July, 1986.

/s/ JOSEPH M. LIVERMORE
Joseph M. Livermore
Presiding Judge



2 CA-CR 4377

Page Two

The foregoing directives were complied
with July 23, 1986, by mailing the
required to:

Honorable Robert K. Corbin
Attorney General
1275 West Washington
Phoenix, Arizona 85007

Office of the Attorney General
Bruce M. Ferg
Assistant Attorney General
402 West Congress, Suite 315
Tucson, Arizona 85701

Bouschor & Hager
Eric L. Hager
7322 North Oracle Road
Tucson, Arizona 85704



IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION TWO

THE STATE OF ARIZONA,)

)

Appellee,) NO. 2 CA-CR 4377
vs.) Department B

)

)

)

WILLIAM WARD KNAPP,) (PIMA County
vs.) Superior Court
vs.) NO. CR-15791)

)

)

)

Appellant.) MEMORANDUM DECISION
vs.) Not for Publication
vs.) Rule 111, Rules of
vs.) the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-15791

Honorable Harry Gin, Judge

AFFIRMED

Robert K. Corbin, The Attorney General
by Bruce M. Ferg Tucson

Attorneys for Appellee

Bouschor & Hager
by Eric L. Hager Tucson

Attorneys for Appellant

L I V E R M O R E, Presiding Judge.

A maid cleaning a Tucson motel room discovered a large quantity of wrapped marijuana in the bathtub. She notified the motel manager who, in turn, called the police. The officers, with the consent of the manager, entered the motel room, saw the marijuana, and then left the room and began surveillance of it. About an hour later, defendant drove up, emptied suitcases in the back of his car, and, with the empty suitcases, entered the room. He came out shortly thereafter with full suitcases and drove way. He was stopped and arrested. All these facts were reported to a magistrate, a search warrant was obtained, and the marijuana was seized from the suitcases. Convicted of transportation of marijuana, defendant's sole argument on appeal is that the marijuana should have been suppressed. We affirm.

The parties are agreed that if the information, apart from the observations of the officers within the motel room,



provided probable cause, then the warrant and resulting seizure were valid. State v. Martin, 139 Ariz. 466, 679 P.2d 489 (1984). The information provided by the maid was in itself sufficient to establish probable cause. State v. Diffenderfer, 120 Ariz. 404, 586 P.2d 653 (App. 1978). The observations of the officers outside the motel room were sufficient to establish probable cause that the marijuana had been transferred to suitcases within the car. That the marijuana ultimately seized was seen during the entry of the motel room is immaterial. United States v. Merriweather, 777 F.2d 503 (9th Cir. 1985) United States v. Moscatiello, 771 F.2d 589 (1st Cir. 1985).

Affirmed.

/s/ Joseph M. Livermore
JOSEPH M. LIVERMORE
Presiding Judge

CONCURRING:

/s/ Ben C. Birdsill
BEN C. BIRDSALL, Judge

/s/ Michael A. Lacagnina
MICHAEL A. LACAGNINA, Judge

Supreme Court, U.S.
FILED

(3)
JUL 20 1987

JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-1710

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner,

v.

THE STATE OF ARIZONA, Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

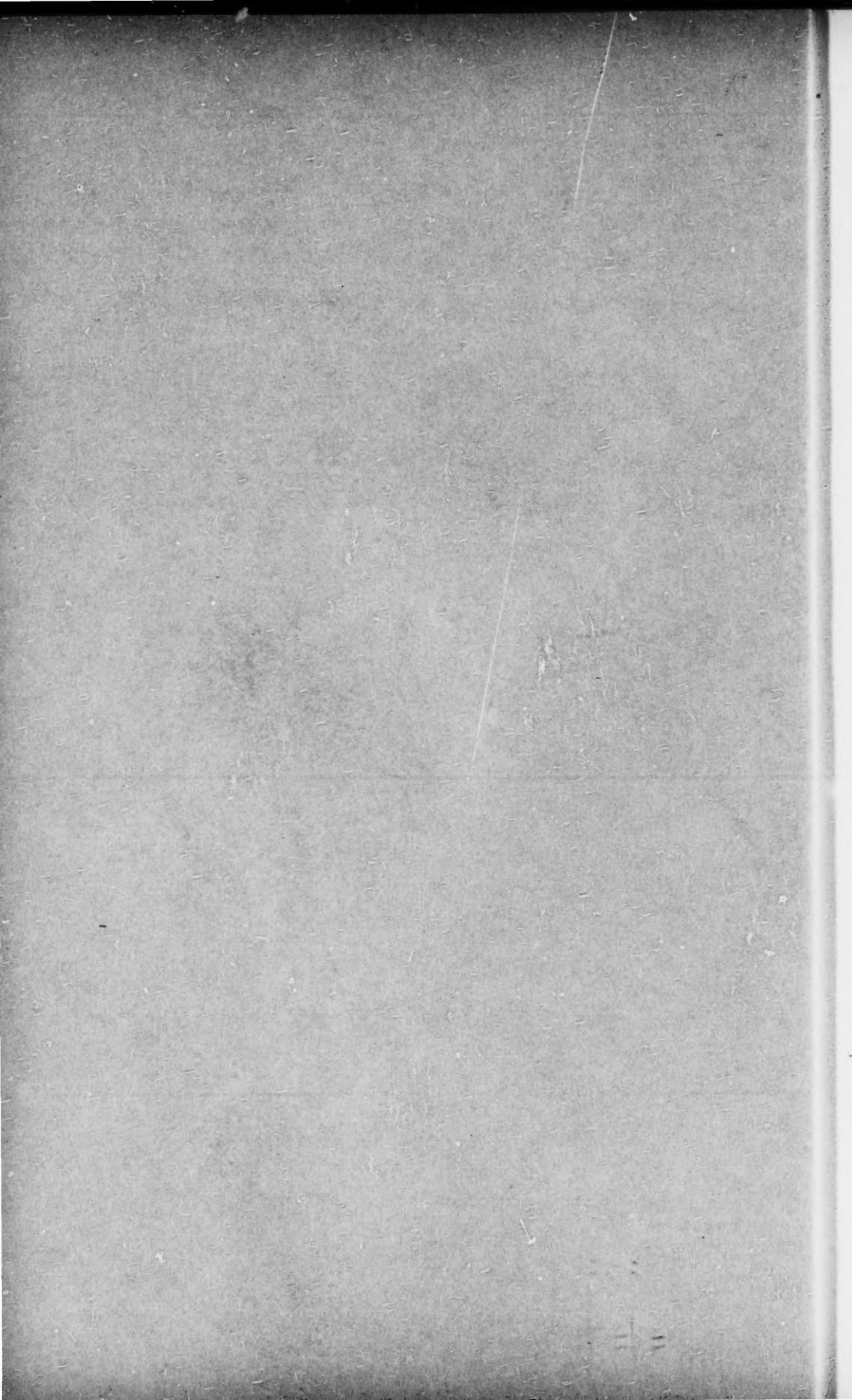
ROBERT K. CORBIN
The Attorney General

WILLIAM J. SCHAFER, III
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BRUCE M. FERG
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85701-1367
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Counsel of Record for
Respondent

318pt



QUESTIONS PRESENTED FOR REVIEW

- I. WAS THIS PETITION FOR CERTIORARI FILED IN ACCORDANCE WITH THE TIME LIMITS SET BY SUPREME COURT RULE 20?
- II. DID THE AFFIDAVIT FOR THE SEARCH WARRANT PROVIDE THE ISSUING MAGISTRATE WITH A "SUBSTANTIAL BASIS" FOR CONCLUDING THAT PROBABLE CAUSE FOR A SEARCH EXISTED, AS REQUIRED BY ILLINOIS V. GATES, AFTER INFORMATION OBTAINED IN A PRIOR WARRANTLESS ENTRY OF THE SUSPECT'S ROOM HAS BEEN EXCLUDED FROM CONSIDERATION?



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TABLES OF CASES AND AUTHORITIES

<u>Brinegar v. United States</u> , 338 U.S. 160 (1949)	19
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<u>United States v. House</u> , 604 F.2d 1135 (8th Cir. 1979), <u>cert. denied</u> , 445 U.S. 931 (1980)	18
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<u>United States v. Rowell</u> , 612 F.2d 1176 (7th Cir. 1980)	16
<u>United States v. Shipstead</u> , 433 F.2d 368 (9th Cir. 1970)	18
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SUPREME COURT RULES:

17.1	5
20	4
20.1	5

MISCELLANEOUS

1 W. LA FAVE, SEARCH AND SEIZURE § 3.3, at 611 (2d ed. 1987)	14
1 LA FAVE § 3.4(a) at 725	15
2 LA FAVE § 3.5(a)	17



STATEMENT OF THE CASE

Petitioner was indicted on a single count of transportation of marijuana. Law enforcement authorities became aware of him on June 29, 1985, because they were called by the management of a Tucson Holiday Inn. (R.T. of January 21, 1986, at 4.) When Officers Knoblock and Ralls arrived at the motel, they were told that marijuana had been found by a maid in one of the rooms. (Id. at 5.) After confirming this information with the maid in question, the officers were admitted to the room by motel personnel using a pass key, looked around without touching anything, and left. (Id. at 5-6.) They observed what appeared to be bags of marijuana in the bathroom. (Id. at 26.) They therefore obtained information about the person who had rented the room, including a vehicle description, and set up surveillance in a room above the room containing the marijuana, with the help of another officer named Kreutz. (Id. at 6-7.)



Sometime later that day the officers observed a car matching the description which they had obtained park in front of the motel, and they saw petitioner get out of the car. (Id. at 7-8.) He emptied the contents of a suitcase onto the back seat of the car, took the empty bag inside the room, and came back out with the suitcase now appearing full and heavy. (Id. at 35-36.) After looking around in all directions, petitioner then re-entered his car and started to drive away, but was stopped before he could get out of the parking lot. (Id. at 35-36.) A telephonic search warrant was obtained for the motel rooms, the luggage, and the car. (A transcription of that conversation with the magistrate is appended to the Petition.) The police recovered marijuana packaged just the way the officers had seen it in the bathroom of petitioner's room. (R.T. of Jan. 21, 1986, at 10.)

After receiving all this testimony at a suppression hearing, the trial judge



concluded that the officers' original entry had been improper, but denied the suppression motion anyway:

The Court has considered the motions to suppress and finds that the entry into the motel room initially by the police officers was illegal and, therefore, grants the motion to suppress with respect to what the police officers saw in the room at that time.

However, the Court is of the opinion that there are sufficient facts contained in the search warrant and the affidavit in support of the search warrant independent of what the officers saw in the room to constitute probable cause for the issuance of the search warrant, and, therefore, denies the motion to suppress insofar as it relates to that which was seized and pursuant to the search warrant.

(Id. at 118.)

The validity of this ruling was the sole issue raised on appeal after petitioner was found guilty as charged in a jury trial. As reflected in the documents submitted with the petition, the trial court's ruling was



upheld by the Arizona Court of Appeals, in a Memorandum Decision which the Arizona Supreme Court declined to review. Petitioner then filed his petition with this Court; the timeliness of the petition is questioned in Argument I. of the "Reasons for Denying the Petition", infra.

REASONS FOR DENYING THE PETITION

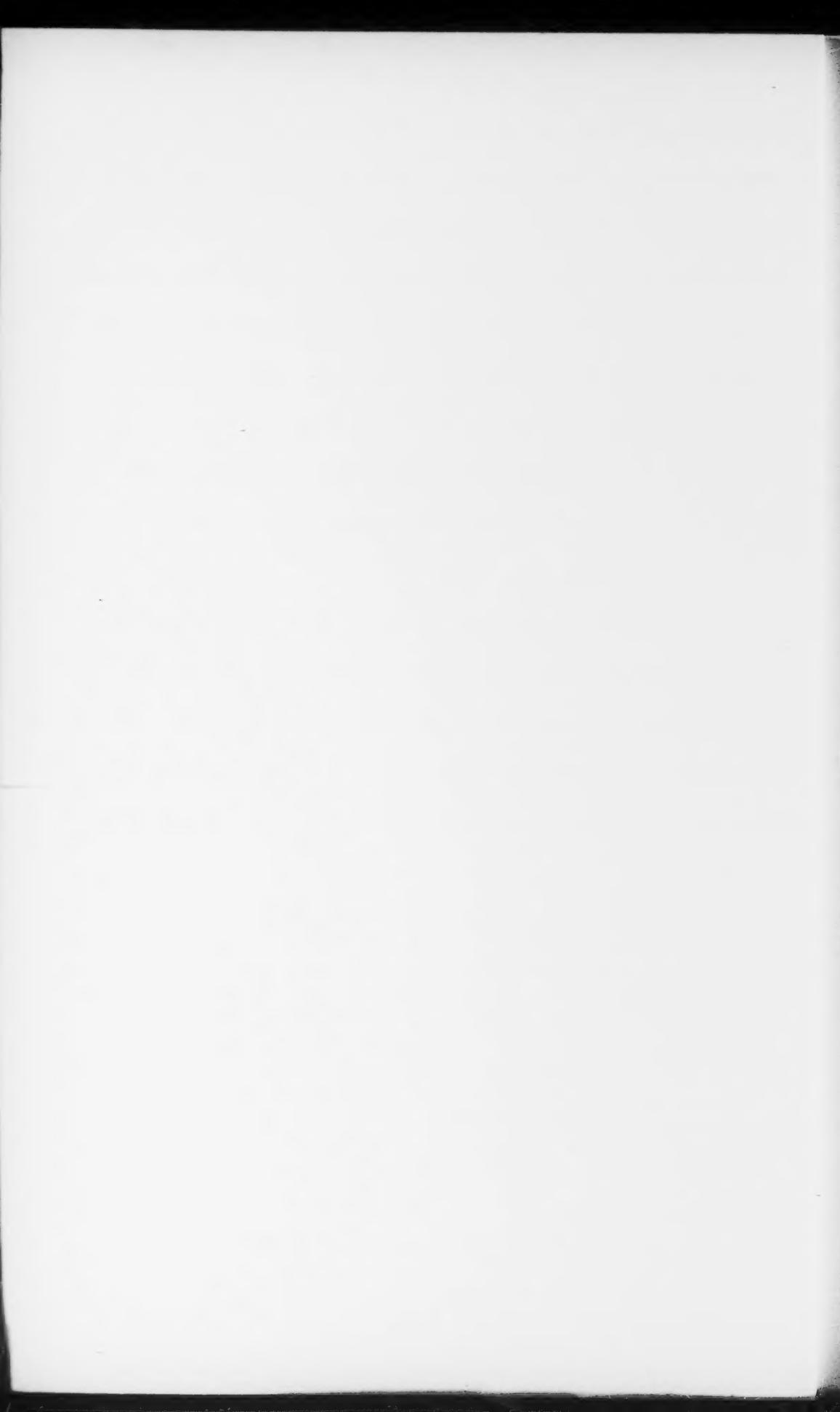
I. THE PETITION FOR CERTIORARI IS UNTIMELY, AND SHOULD THEREFORE BE REJECTED.

This Court normally will not entertain a petition for certiorari which has not been filed in a timely manner. The time for filing is governed by this Court's Rule 20, which states in pertinent part (emphasis added):

.1. A petition for writ of certiorari to review the judgment in a criminal case of a state court of last resort or of a federal court of appeals shall be deemed in time when it is filed with the Clerk within 60 days after the entry of such judgment.

* * *

.4. The time for filing a



petition for writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice).

"Exhibit A" to the petition is a copy of the mandate in this case, which issued from the Arizona Court of Appeals after the Arizona Supreme Court declined to review the decision of the Court of Appeals. This Court's certiorari jurisdiction exists to permit review of decisions by state courts "of last resort". (Supreme Court Rules 17.1, 20.1.) Therefore, the date governing the filing time for this petition was the date of the Arizona Supreme Court's order declining review, not the date of the Court of Appeals' mandate. "Exhibit A" reflects that the date of the Arizona Supreme Court's order was January 20, 1987. The allotted 60 days for filing the petition therefore expired on March 21, 1987, but the certificate of service shows that the petition was not mailed until April 6,



1987. Hence, the petition was filed more than 2 weeks late, and should be denied for that reason alone.

II. ALL THAT A REVIEWING COURT NEED FIND IN REVIEWING THE ISSUANCE OF A SEARCH WARRANT IS THAT THE ISSUING MAGISTRATE POSSESSED A "SUBSTANTIAL BASIS" FOR CONCLUDING THAT PROBABLE CAUSE EXISTED: SUCH A SUBSTANTIAL BASIS EXISTED IN THE OBSERVATION OF MARIJUANA MADE BY A CITIZEN-INFORMER, TRANSMITTED TO THE MAGISTRATE THROUGH OTHER RELIABLE PERSONS AND SUPPLEMENTED BY OBSERVATIONS OF PETITIONER'S PECULIAR CONDUCT MADE BY THE POLICE, SO THE WARRANT HERE WAS CORRECTLY ISSUED IN LIGHT OF THE TOTALITY OF THE CIRCUMSTANCES.

The marijuana which formed the basis for the charges against petitioner was seized pursuant to a search warrant. Petitioner nonetheless claims that the seizure was illegal, arguing that the affidavit supporting the warrant failed to establish probable cause after the parts which could not properly be considered (the observations of the marijuana made by two police officers during their original warrantless entry into petitioner's room) had been eliminated.



Both the trial court and the Arizona Court of Appeals concluded that the affidavit was sufficient, even after deletion of the improper material, and the Arizona Supreme Court signalled its agreement by refusing to review the case and this Court should do the same.

The proper approach for evaluating the sufficiency of affidavits for search warrants was discussed by this Court in Illinois v. Gates, 462 U.S. 213 (1983).

As early as Locke v. United States, 7 Cranch. 339, 348 (1813), Chief Justice Marshall observed, in a closely related context, that "the term 'probable cause', according to its usual acceptation, means less than evidence which would justify condemnation It imports a seizure made under circumstances which warrant suspicion." More recently, we said that "the quanta ... of proof" appropriate in ordinary judicial proceedings are inapplicable to the decision to issue a warrant. Brinegar, supra, 338 U.S., at 173. Finely-tuned standards such as proof beyond a reasonable doubt or by a



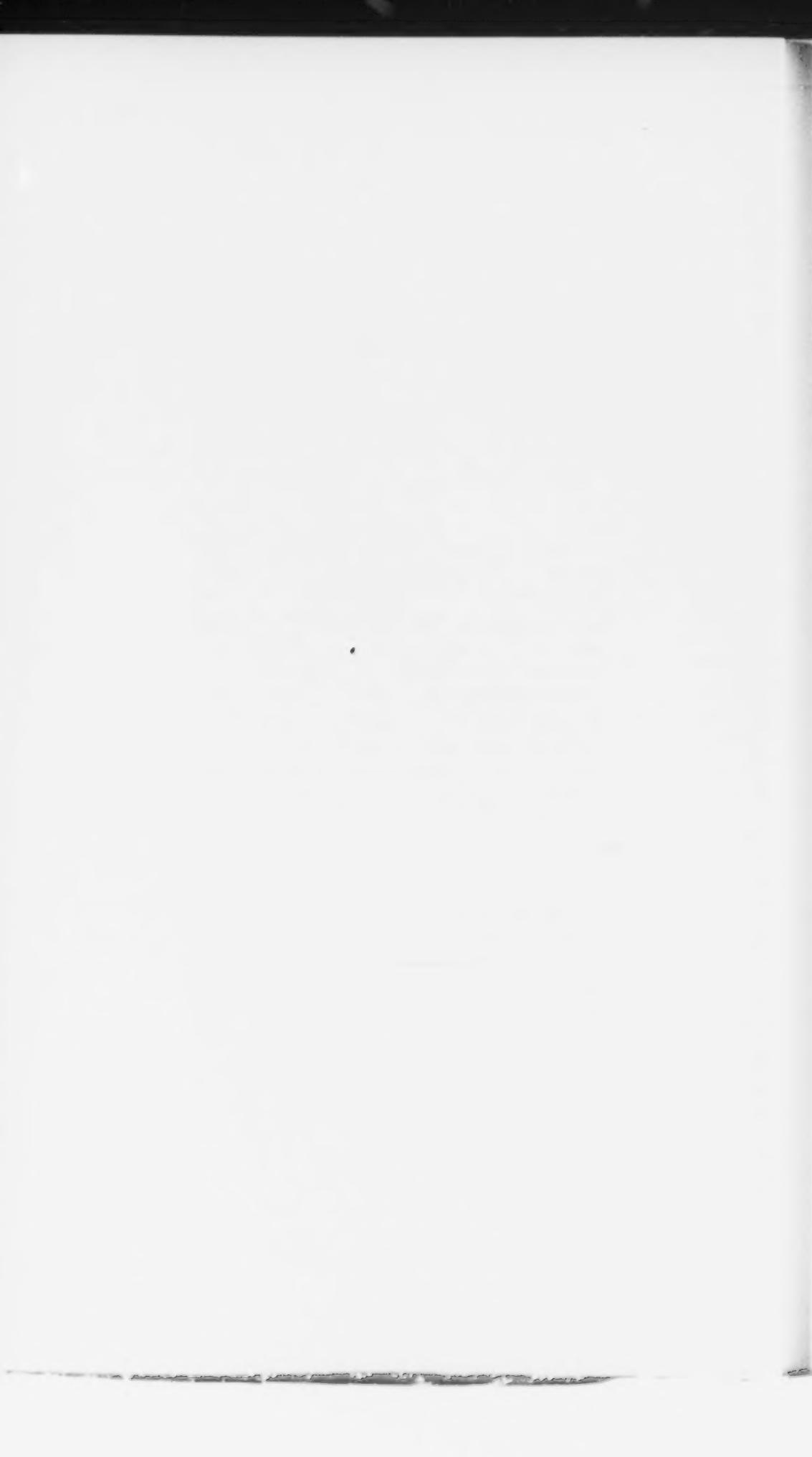
preponderance of the evidence, useful in formal trials, have no place in the magistrate's decision. While an effort to fix some general, numerically precise degree of certainty corresponding to "probable cause" may not be helpful, it is clear that "only the probability, and not a *prima facie* showing, of criminal activity is the standard of probable cause."

* * *

We also have recognized that affidavits "are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleading have no proper place in this area." Ventresca, supra, 380 U.S., at 108.

* * *

Similarly, we have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. A magistrate's "determination of probable cause should be paid great deference by reviewing courts." Spinelli, supra, 383 U.S., at 419. "A grudging or negative attitude by reviewing courts toward warrants,"

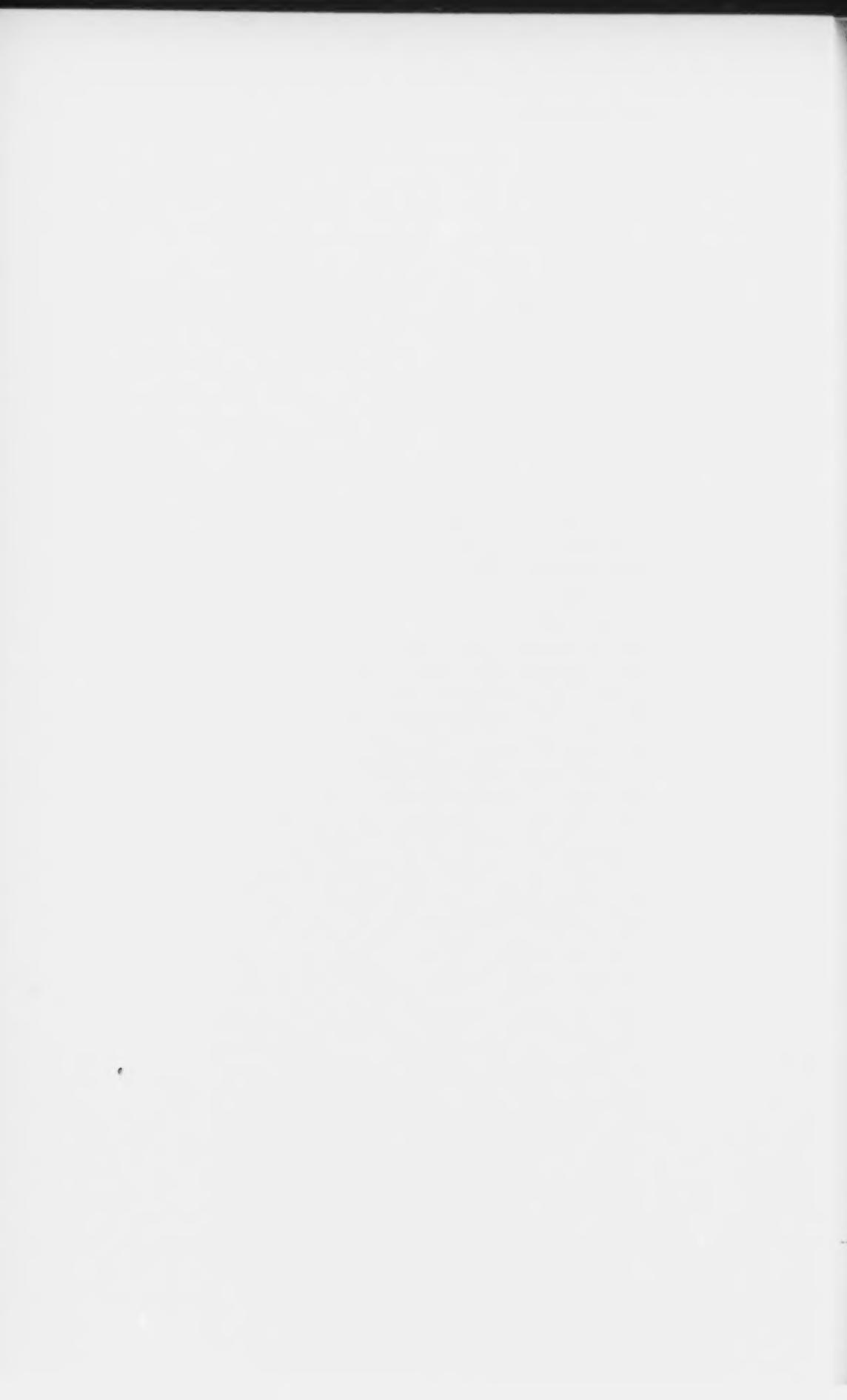


Ventresca, supra, 380 U.S., at 108, is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant "courts should not invalidate ... warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner." Id. at 109.

* * *

Reflecting this preference for the warrant process, the traditional standard for review of an issuing magistrate's probable cause determination has been that so long as the magistrate had a "substantial basis for ... conclud[ing]" that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more. Jones v. United States, 362 U.S. 257, 271 (1960). See United States v. Harris, 403 U.S. 573, 577-583 (1971).¹⁰

10 We also have said that "although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded



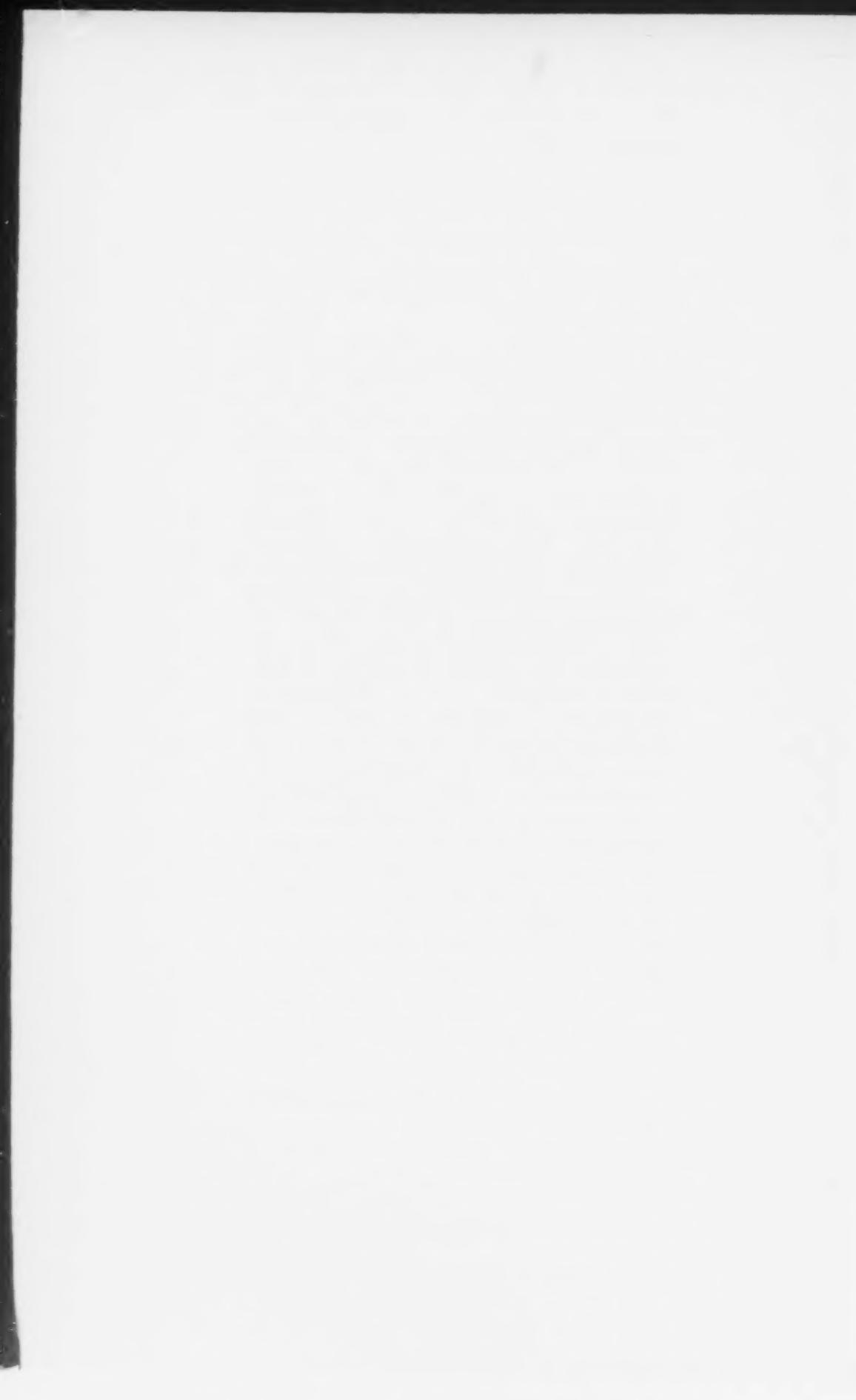
to warrants," Ventresca,
supra, 380 U.S., at 109.

* * *

For all these reasons, we conclude that it is wiser to abandon the "two-pronged test" established by our decisions in Aquilar and Spinelli. In its place we reaffirm the totality of the circumstances analysis that traditionally has informed probable cause determinations. See Jones v. United States, supra; United states v. Ventresca, supra; Brinegar v. United States, supra. The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for ... conclud[ing]" that probable cause existed.

(462 U.S. at 235-39.)

Viewed in the light of these principles, it is clear that the facts supplied by



Officer Kreutz in his telephonic affidavit (a copy of which is included in the petition) were entirely sufficient to uphold issuance of the search warrant. Eliminating the two sentences of the affidavit which contain the observations made by Officers Ralls and Knoblock during their illegal entry into petitioner's room, the affidavit discloses the following:

1. A maid employed by Holiday Inn observed in Room 129 what appeared to her to be marijuana in "quantity".

2. The management of the Holiday Inn reported this observation to the police and showed the contents of the room to them.

3. The person renting the room used the name Robert Pechulis.

4. The person renting the room had indicated in registering that he was driving a car with Arizona license plate CNT 534.

5. A police surveillance team observed a person who matched the description of "Pechulis" drive up in a car with that license number.



6. "Pechulis" dumped the contents of his luggage into his car and brought the emptied bags, as well as folded boxes, into the room; when he left the room a short time later the bags appeared full and had become so heavy that he was having difficulty carrying them.

7. "Pechulis" attempted to drive away and was stopped.

Most of these facts are superficially innocent matters, which take on the sinister cast of criminality only because of the observation of the suspected marijuana by the maid. The petition therefore focuses its attack on that particular observation, and makes two, somewhat interrelated arguments. First, petitioner complains that the affiant (Kreutz) did not speak to the maid, so the matter he put into the affidavit about her observation was multi-level hearsay. Second, he points out that the maid was not named in the affidavit, and suggests that, as an "anonymous informant" her reliability is



suspect. From all this he concludes that there was too little of probative value in the affidavit to support the warrant.

These arguments can best be analyzed in reverse order. While the maid was not specifically named in the affidavit, that does not make her a suspect "anonymous informant" in the sense that that phrase is generally used.

Everyone who gives information to the police might be called an "informant" in the broad sense of that word. "But the person most of us have in mind when we discuss this subject is in a somewhat more restricted category. He is likely to be a person in the underworld or a person on its periphery; in its confidence, or so much 'a part of the scenery' to the criminal that this person is in a particularly good position to know the story of a crime committed, the story of criminal business done, being transacted or proposed for the future; or at least he gets significant bits of information which, when placed in context by the investigator, will demonstrate an accurate picture of crime." It is



this type of person to which the word "informant" is intended to apply herein.

This narrower interpretation of the word is necessary in this context, for the courts have quite properly drawn a distinction between such a person and the average citizen who by happenstance finds himself in the position of a victim of or a witness to criminal conduct and thereafter relates to the police what he knows as a matter of civic duty. One who qualifies as the latter type of individual, sometimes referred to as a "citizen-informer," is more deserving of a presumption of reliability than the informant from the criminal milieu. As Justice Harlan pointed out in United States v. Harris,

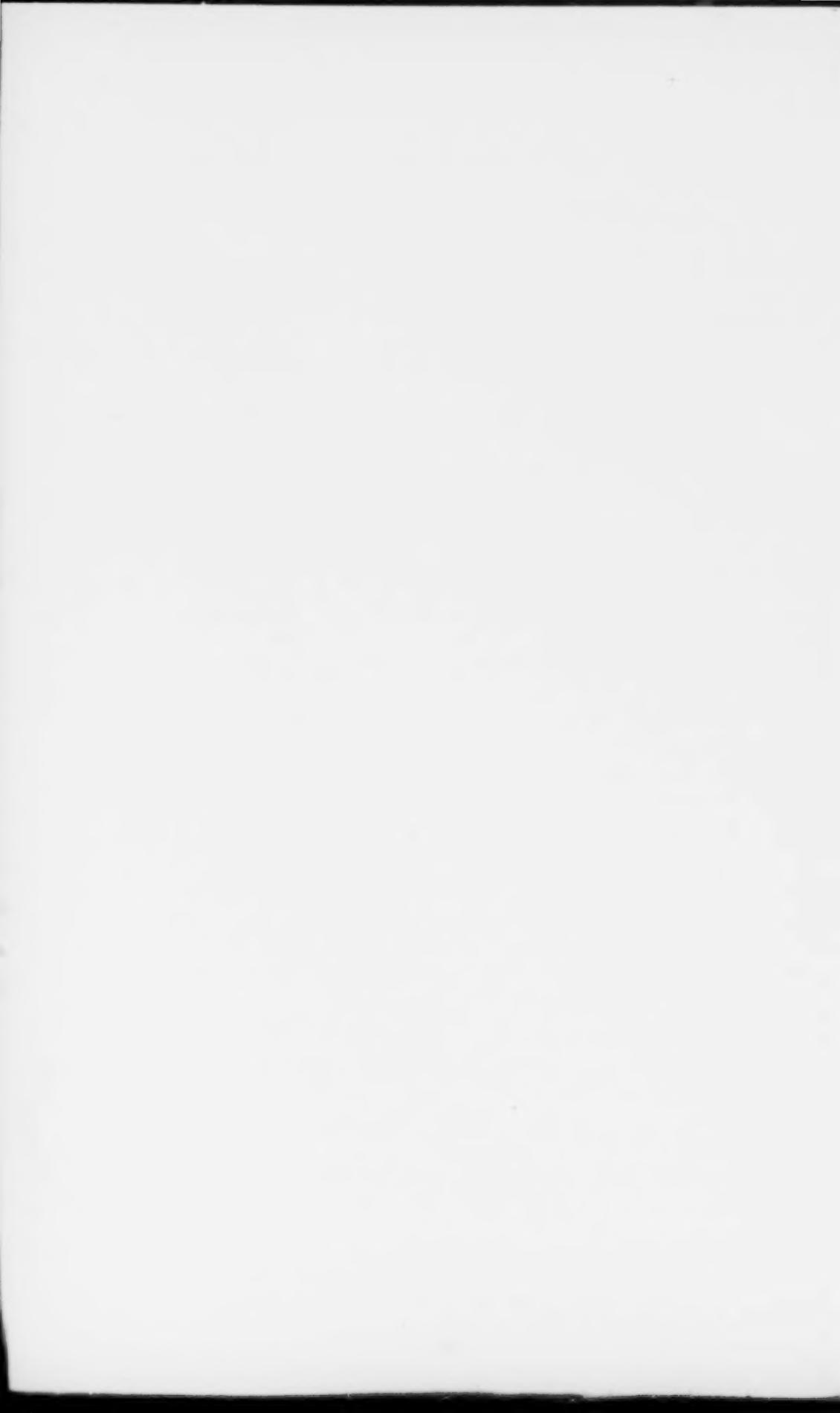
the ordinary citizen who has never before reported a crime to the police may, in fact, be more reliable than one who supplies information on a regular basis. "The latter is likely to be someone who is himself involved in criminal activity or is, at least, someone who enjoys the confidence of criminals."



611 (2d ed. 1987) (footnotes omitted). Indeed, this Court and numerous other courts have proceeded on the basis that the veracity of a citizen-informer can be assumed. (*Id.* at § 3.4(a); see, e.g., *Chambers v. Maroney*, 399 U.S. 42 (1970).)

The maid here was entitled to be treated by the magistrate as such a presumptively reliable citizen-informer because, while her name was not specified in the affidavit,¹ she was clearly identified by position -- the maid caring for Room 127 of the Holiday Inn on West Grant Road in Tucson. This was enough to set her apart from the criminal milieu. "[I]t is one thing for the person giving the information to be anonymous even to the police and quite another for him to be 'known to the police but merely unidentified'." 1 LA FAVE § 3.4(a) at 725. Even under the stricter test applied before *Illinois v. Gates* was decided information from known but unnamed citizen-informers was

¹ The lady was identified during the suppression hearing as Mariana Benitez.



held reliable enough to provide probable cause. See, e.g., United States v. Fooladi, 703 F.2d 180 (5th Cir. 1983), aff'd on rehearing, 746 F.2d 1027 (5th Cir. 1984), cert. denied, ___ U.S. ___, 105 S.Ct. 1362 (1985) ("Although the name of the glass company's representative was not disclosed in the affidavit, the name of the company ... was disclosed. At least when the information is furnished on behalf of a company by one of its employees ... disclosure of the company name is sufficient."); United States v. Rowell, 612 F.2d 1176 (7th Cir. 1980) (information from unnamed American Express employee, to bank official, to police, that money orders were forgeries); United States v. King, 601 F.Supp. 783 (N.D. Ill. 1985) (information from unnamed Ohio bank employee, to Illinois bank employee, to police; post-dates Gates, but does not mention its looser standard); People v. Henry, 631 P.2d 1122 (Colo. 1981) (information from unnamed apparent victim of assault to one police officer to other



officers provided probable cause for arrest).

The maid therefore was a presumptively reliable source of information. The Holiday Inn manager was likewise presumptively reliable, and the same is true of the other police officers who conveyed the information to the affiant, Kreutz. United States v. Ventresca, 380 U.S. 102, 111 (1965); 2 LA FAVE § 3.5(a), and numerous cases cited therein. Thus, there was a presumptively reliable chain of communication all the way from the maid who saw the apparent marijuana through the affiant officer to the magistrate. Moreover, that the magistrate could conclude that the substance probably was marijuana, even without any information detailing the maid's qualifications to identify the weed, is clear. A number of cases have found no fault with informants' identifications of probable contraband without enumeration of qualifications to make such identifications. See, e.g., McCray v. Illinois, 386 U.S. 300 (1967); Christian v. McKaskle, 731 F.2d 1196 (5th



Cir. 1984); United States v. House, 604 F.2d 1135 (8th Cir. 1979), cert. denied, 445 U.S. 931 (1980); United States v. Cates, 663 F.2d 947 (9th Cir. 1981); United States v. Shipstead, 433 F.2d 368 (9th Cir. 1970); State v. Diffenderfer, 120 Ariz. 404, 586 P.2d 653 (Ct.App. 1978); Dishman v. State, 3 Tenn.Cr.App. 725, 460 S.W.2d 855 (1970). It should also be recalled that the magistrate had not only the maid's statement but also the police observations of petitioner's peculiar conduct to go on; such circumstances tend to verify a citizen-informer's conclusions about the nature of contraband. See People v. Rueda, 649 P.2d 1106 (Colo. 1982).

The establishment of the maid's presumptive reliability (which nothing either within the affidavit or outside of it rebutted in the least) really answers both of petitioner's arguments. The maid and everyone else in the chain of communication to the magistrate was apparently reliable. The most natural and reasonable



interpretation of the affidavit is that the maid's observations were passed all the way along to Kreutz and thence to the magistrate. Certainly it was multi-level hearsay, but hearsay the reliability of which is challenged only by speculation, not by actual facts or reasonable inferences derived from facts. The hypertechnical parsing of the affidavit advocated by petitioner is an approach condemned repeatedly by this Court, from Brinegar v. United States, 338 U.S. 160 (1949), through Ventresca to Gates. This Court reiterated the point of Gates in Massachusetts v. Upton, 466 U.S. 727, 728 (1984), that "the task of a reviewing court is not to conduct a de novo determination of probable cause, but only to determine whether there is substantial evidence in the record supporting the magistrate's decision to issue the warrant". The Pima County Superior Court found probable cause; the Arizona Court of Appeals found probable cause; the Arizona Supreme Court did not



disagree with either of them. Applying the deferential standard this Court has itself established, it is certain that probable cause existed, so this petition should be denied.

CONCLUSION

The Court should not even consider this petition, because it was filed untimely. However, even on its "merits" the petition warrants no relief, because the actions of the Arizona courts were manifestly correct. Therefore, regardless of how this petition is approached, it deserves only to be denied.

RESPECTFULLY SUBMITTED,

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
OF SUPPRESSION HEARING

JANUARY 21, 1986.

[PAGE 3]

JOSEPH KNOBLOCK,

called as a witness on behalf of the State,
being first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MS. NYGAARD:

Q Officer, could you state your name,
please:

A Joseph Knoblock.

Q And what is your occupation at this
time?

[PAGE 4]

A I am a police officer for the City of
Tucson.

Q How long have you been with Tucson
Police Department?

A Since March of '85.

Q And were you on duty as a police
officer back on June 29, 1985?

A Yes, Ma'am.



Q And were you working with someone else at that time?

A Yes, Ma'am. I was working with another officer.

Q Now, do you recall being summoned to -- I believe it was the Holiday Inn on that day?

A Yes, Ma'am.

Q Can you tell us how that came about?

A We were dispatched to the Holiday Inn there by Grant and I-10. The police department received a call from the motel, requesting us to come there.

Q And do you know who it was that made the call?

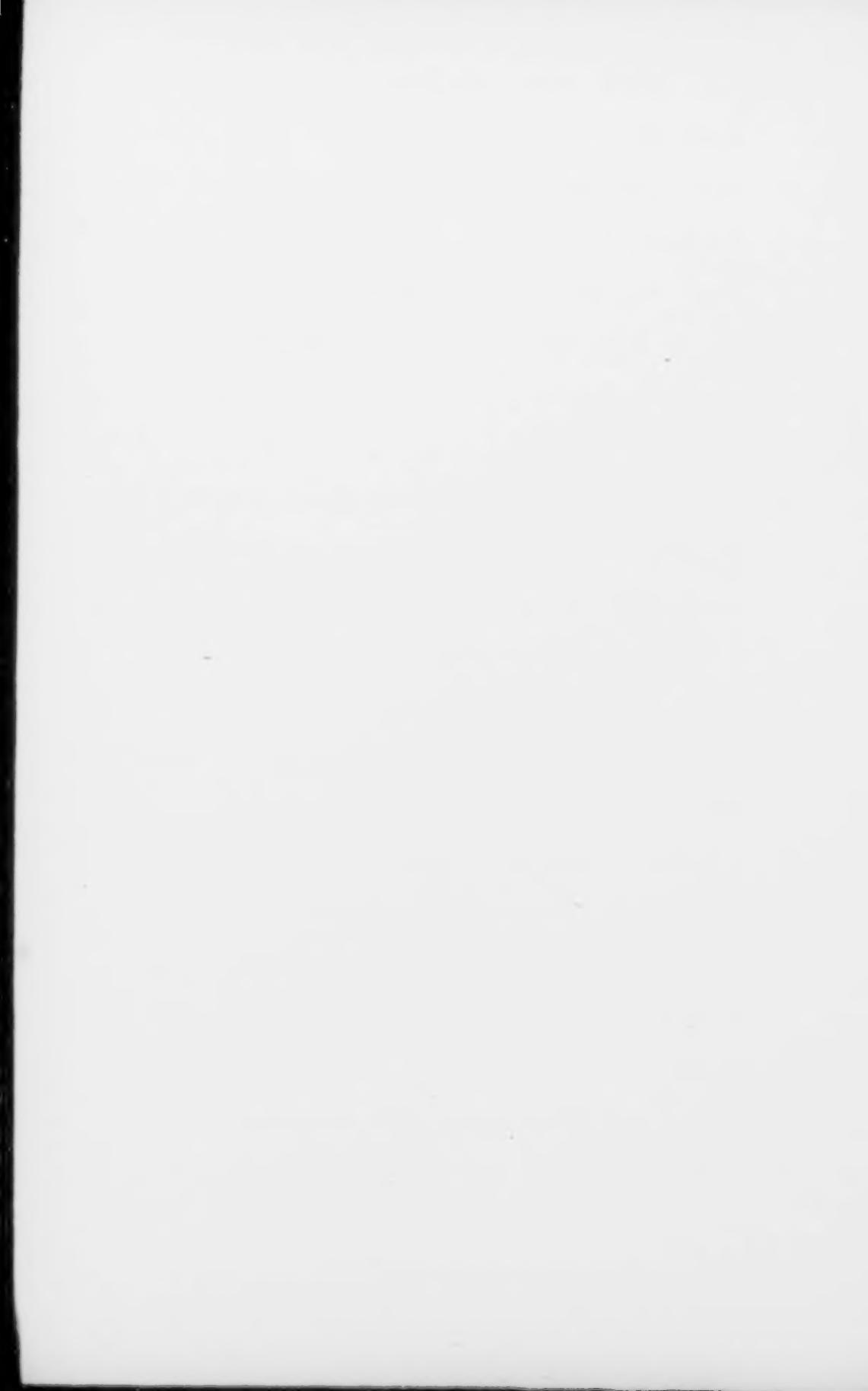
A It was from -- I can't remember her name now. It's on my report. She is like the assistant manager or management type of a person with the motel.

Q Could her name have been Linda Dutton?

A Yes, Ma'am.

[PAGE 5]

Q And when you responded to the motel,



did Officer Ralls go with you?

A Yes, Ma'am.

Q When you got there, did you have any contact with Linda Dutton?

A Yes, Ma'am.

Q And did she tell you why she had requested you to come there?

A Yes, she did, Ma'am.

Q What was the reason she requested you to come?

A She stated that a maid had found some marijuana in one of the motel rooms.

Q And did she describe any further with any details about what the maid had found?

A I don't remember exactly what was all said at this time.

Q Okay. As a result of that information, what did you do?

A We contacted the maid and a maintenance man also that were there and we obtained a -- obtained the keys and went into one of the rooms.



Q Now, was the maid's name Mariana Benitez?

A Yes, Ma'am.

Q Were the hotel personnel -- had they already [PAGE 6] previously been in the room?

A Yes, Ma'am. They stated that they had gone to the room to clean it, and I asked what their reason was for going into the room.

Q Now, when you went into the room, did you touch anything?

A No. We just went into the room and looked inside and then exited again.

Q And what did you do as a result of that or after that?

A After we went inside the room?

Q Yeah, and came out.

A Okay. After we came back out, we secured the room and then we obtained a key to a room which was directly above the one we went into on the second floor where we could watch the room.



We also obtained other information as far as who was renting, the register on the room, and any vehicles associated with the room.

Q Did you get information about a specific vehicle that went with the person that rented the room?

A Yes. We got a license number and a description of a vehicle -- of a person that had rented the room.

Q Do you recall what the name of the person who [PAGE 7] rented the room was, what name was given?

A No, I don't remember right now.

Q Do you recall whether that was information that you put into your report?

A I am not positive. I would have to look at my report to see.

Q Okay. Was the name -- do you remember whether the name that was on the registration slip was William Knapp?

A No. I remember that was not the name



that was on the registration.

Q Okay. What did you do next after you went upstairs?

A After we went upstairs, we contacted the police department and requested that we could see if we could get ahold of someone that worked with the Metro Narcotics Squad, and Officer Kreutz telephoned us there at the motel and he talked to -- I believe he talked to Officer Ralls, then he -- Officer Kreutz responded to the motel, also.

Q Okay. What happened after Officer Kreutz got there?

A After Officer Kreutz got there, we were watching out and we observed the vehicle which was registered on the registration slip -- we identified it

[PAGE 8]

by the license plate number that was on the registration slip -- pull up in front of the motel room below us.

Q And did you do anything?



A We observed Mr. Knapp get out of the car and go inside the motel room.

Q Now, when you say "Mr. Knapp", is that person present in the courtroom?

A Yes, Ma'am.

Q Could you identify him?

A Yes. He is in the maroon sweater with the tie at the defense table.

MS. NYGAARD: Let the record reflect that the defendant has been identified.

THE COURT: Yes, the record may so reflect.

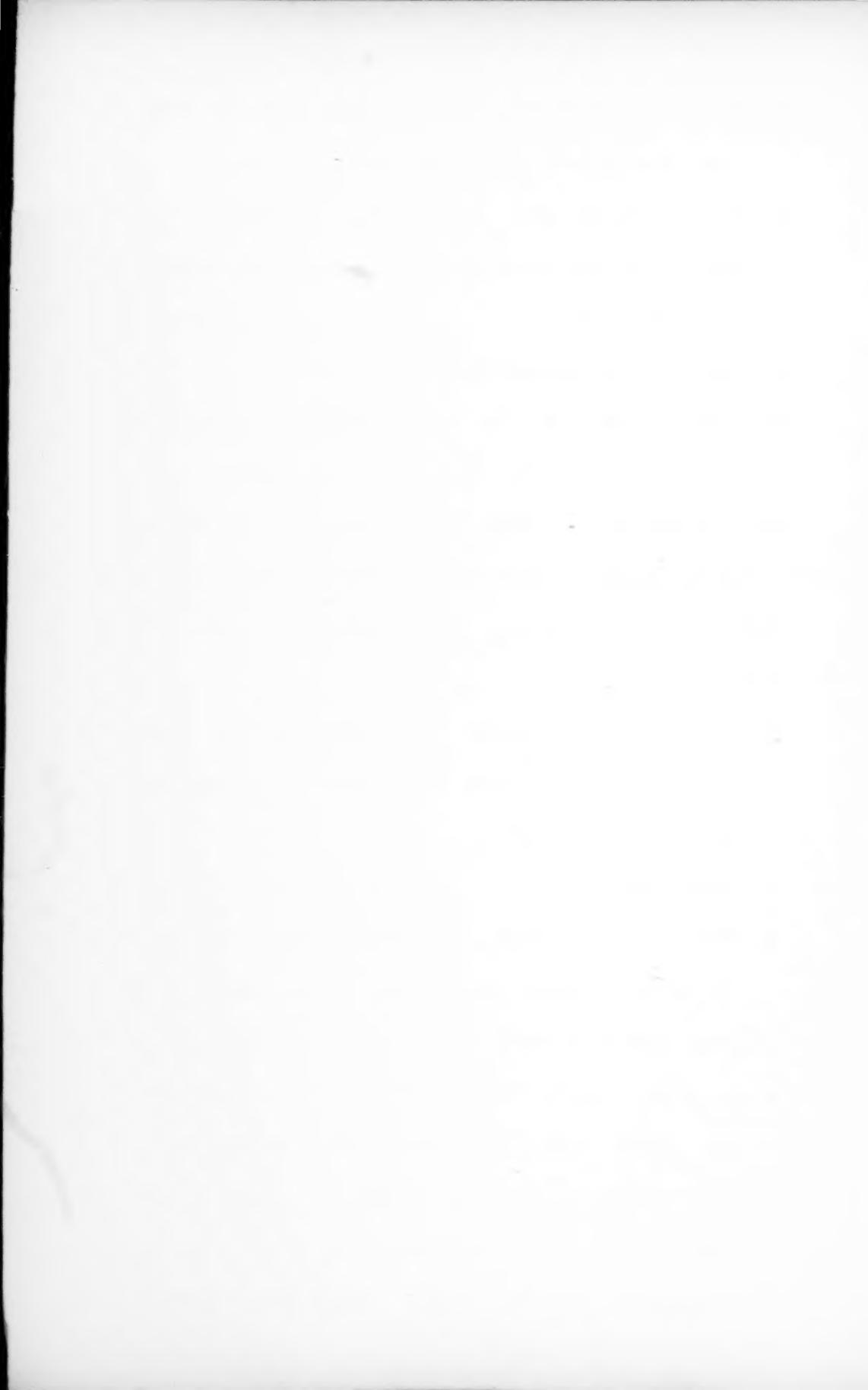
Q (By Ms. Nygaard) Before we go any further, was this Holiday Inn located in Pima County?

A Yes, Ma'am.

Q Now, after you -- well, during the time you were watching him, what did you see him do?

When I say "him", I mean Mr. Knapp.

A He took the bag full of items into the motel room and then he also took one or two suitcases, I don't remember which now, into the motel



room, then he brought a -- the suitcases back out after a short time.

Q What did he do with them?

[PAGE 9]

A He put them in the car and then he got in his vehicle and was going to leave.

Q Okay. What did you do then?

A Okay. We had requested other assistance from other officers. Officer Kingman and Officer Jackson were in the -- came into the area to assist us, and then when Mr. Knapp went to leave in his car, we stopped the car there. He was in the parking lot, still, of the Holiday Inn where we made the stop.

Q And did you do anything at that point?

A Yes. We arrested Mr. Knapp at that time.

Q Did you at that time conduct a search of this car?

A No. We secured the car and motel rooms, and if I remember right, then



we went to the -- the car was still secured and search warrants were obtained.

Q And after the search warrants were obtained, did you then conduct a search of the car?

A Yes. The search -- we conducted a search. Search warrants were obtained and, also, the T.P. identification unit also responded and took photographs while we were taking the items out of the car.

Q Okay. Am I correct, though, in saying that you did not conduct a search of the car until after you had obtained a search warrant?

[PAGE 10]

A Yes, Ma'am.

Q What were the items that you found in the car?

A There were two suitcases, both containing rolls of green substance which we believed to be marijuana.



Q This is your report?

A Yes, sir.

Q Okay. Do you want to read the first sentence of the third paragraph?

A "Upon our arrival, Officer Ralls and myself were led into Room 129 by Mrs. Dutton."

Q Okay. Read the second sentence also, please.

A "We checked the room and also went into the bathroom, where we observed the bags of marijuana."

[PAGE 35]

A At that time, I informed the officers that were set up east and west of the location on Grant Road that the vehicle was at the motel and from the vantage point that we had from the motel room, we were able to observe the driver of the vehicle emptying a suitcase in the rear seat area of his vehicle and also bring items into the



motel room Number 129 from his vehicle, and shortly thereafter, he came out, carrying the items, same suitcase and bags, but they appeared filled with something at that time.

Q Did they appear filled when he took them in?

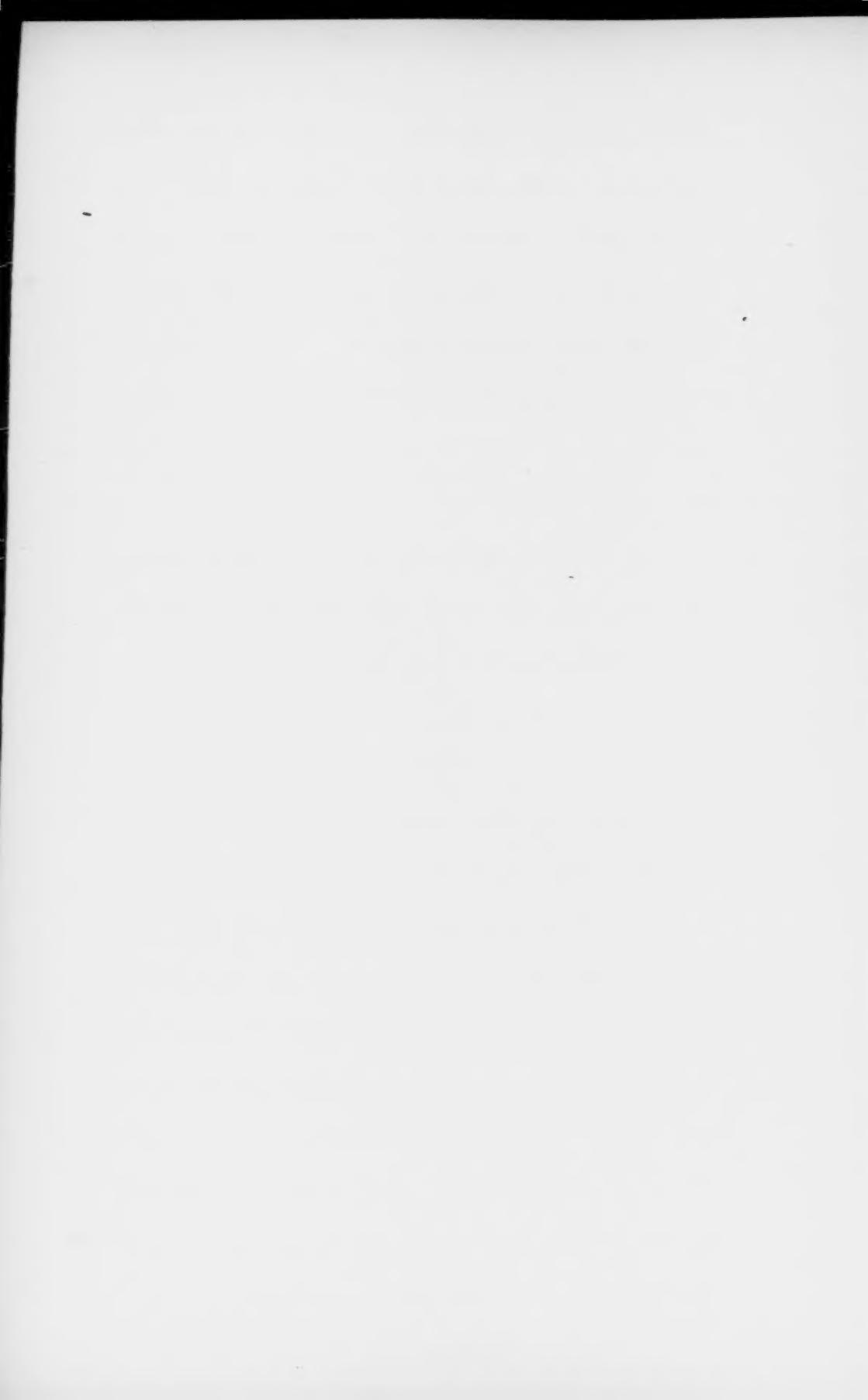
A No, they did not.

Q So it appeared they got filled while he was inside and was carrying stuff out to his car?

A Yes.

Q Okay.

A And then as he got in the vehicle, during the course of this time, he was looking around excessively in all different directions as if watching for someone, and he got into the vehicle, backed the vehicle away from the slot that was directly in front of the Rooms 127 and 129 and began driving out of the parking lot in a northbound direction.



Q Officer, let me clarify just one thing. You said that he took suitcases into the motel [PAGE 36] room. Did the suitcases appear heavy when he carried them in?

A No, they did not. From where I was at, I observed him emptying one of the suitcases, what appeared to be clothing into the back seat of the car.

Q So it looked like he was taking clothes out of his suitcase, dumping them in the back seat and carrying the empty suitcase into the motel room?

A Yes.